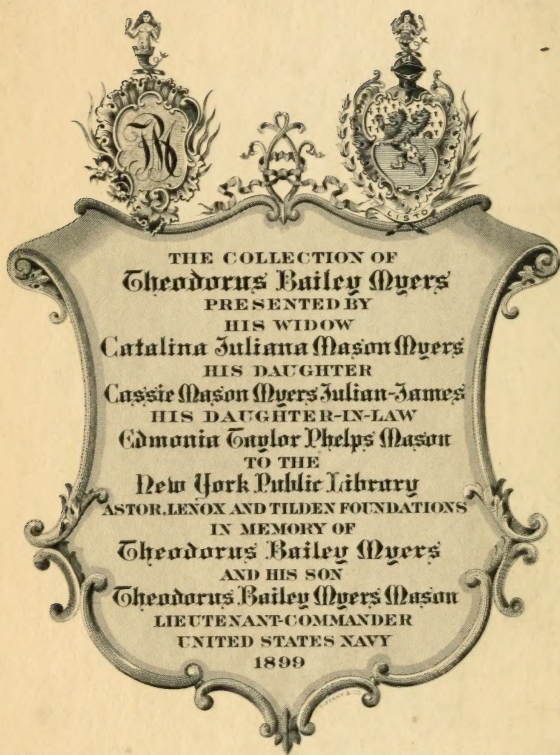


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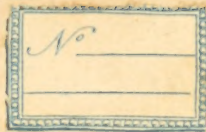
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THE UNITED STATES,

FROM THE

ACCESSION OF GEORGE WASHINGTON TO THE PRESIDENCY, EXHIBITING A COMPLETE VIEW OF OUR FOREIGN RELATIONS SINCE THAT TIME.

IN TEN VOLUMES.—VOL. II.

SECOND EDITION.

PUBLISHED UNDER THE PATRONAGE OF CONGRESS.

INCLUDING

CONFIDENTIAL DOCUMENTS,

NOW FIRST PUBLISHED.

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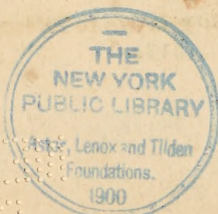
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JNO. W. DAVIS,

Clerk of the District of Massachusetts.



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DOCUMENTS

ACCOMPANYING THE PRESIDENT'S MESSAGE OF APRIL 4.
1794.

[Continued from preceding volume.]

*Additional instruction to the commanders of all our
G. R. ships of war and privateers, that have or may
[L. S.] have letters of marque against France.*

Given at our Court at St. James's, the 6th day of
November, 1793, and in the 34th year of our
reign.

THAT they shall stop and detain all ships laden with
goods, the produce of any colony belonging to France, or
carrying provisions, or other supplies, for the use of such
colony, and shall bring the same, with their cargoes, to
legal adjudication in our courts of admiralty.

By his majesty's command,

HENRY DUNDAS.

London, January 9, 1794.

MY DEAR SIR,—You will receive herewith the copy of
an instruction to the commanders of his Britannick majes-
ty's ships of war, &c. dated the 8th of this month, con-
cerning which I had another conversation this morning
with the minister of the foreign department. On his say-
ing, in the introduction of the subject, that he hoped I
saw in it a manifestation of the good will of this govern-
ment towards the United States, I observed, that it was
certainly much less injurious to us than the instruction
which it revoked, and might be as favourable as the prin-

ciples, upon which this government acts, would admit ; but I reminded him, that our ideas differed materially from theirs on this subject ; and without repeating the arguments I had before addressed to him, both verbally and in writing, in support of our position, it was only necessary to say, that we did not admit the right of the belligerent powers to interfere farther in the commerce between neutral nations and their adversaries, than to prevent their carrying to them articles, which, by common usage, were established as contraband, and any articles to a place fairly blockaded ; that consequently the two first articles, though founded upon their principles of not suffering, in war, a traffick which was not admitted by the same nations in time of peace, and of taking their enemies property, when found on board of neutral vessels, were, nevertheless, contrary to what we contended to be the just principles of the modern law of nations ; that indeed I had some doubt of the first article being altogether supported by their own principle ; but supposing that article, as well as the rest, to be consonant to their former usage, I wished to know, whether their present re-publication imported any thing more than was before practised.—Lord Grenville answered, that the only reason for renewing them was, lest the present instruction, being a revocation of that of the 6th of November, might also be deemed to revoke these articles, which were connected with it.—His lordship then explained the motives which had induced this government to issue the present instruction.—The first, he said, was the sincere desire of administration to maintain the best understanding and harmony with the United States—The second was, what he could not mention to me officially, but what he still thought it right I should be apprized of, that no misconception of their motives might be entertained ; that he was aware of the delicacy of speaking to a foreign minister concerning the internal state of his country, neither could he expect an answer from me on the subject ; but that their second reason was, by this conduct, to take away every pretext, from evil disposed persons among us, who, according to the intelligence he had received, were endeavouring to irritate our people against Great Britain, as well as to oppose the measures of our own government, and, in short, to reduce us to the

present situation of France ; a misfortune which they deprecated, as well for our sakes, as for the common welfare and tranquillity of mankind—He farther took occasion to observe, with respect to the conduct of our government in maintaining our neutrality, that, although there were some matters with which this government was not perfectly satisfied (and to which, for the same reason, they refrained from giving that opposition they thought they would be justified in doing) yet from the general tenour of the conduct of our government, they were convinced it was their desire to maintain a fair neutrality, which was an additional motive for their present conduct.—I, of course, said nothing of our internal affairs, nor of those of France. I assured him, however, that our government had been perfectly sincere in every measure relating to our neutrality ; that they adopted it from a conviction that it was both just and politic, and had pursued it according to what they conceived to be just principles, knowing that such conduct could entitle us to the benefits to be derived from a neutral situation. I concluded, by asking what explanation could be given of what was passed in this business ; and of the effect of the instruction of the 6th of * May upon such vessels as might, during the two months it had been in force, have fallen into the hands of their cruisers ? Lord Grenville answered, that the order of the 6th November was intended to be temporary, and calculated to answer two purposes ; one was to prevent the abuses which might take place, in consequence of the whole of the St. Domingo fleet having gone to the United States ; the other was on account of the attack designed upon the French West-India islands, by the armament under Sir John Jervis and Sir Charles Grey ; but that it was now no longer necessary to continue that regulation for those purposes—He added, that the instruction of the 6th of November only authorized the vessels to be brought in for legal adjudication : And upon being told, that notwithstanding such were the terms made use of, yet that the officers who would have to act under it must conceive it to extend to condemnation, because, otherwise, the order was unnecessary, as, without it, they had been authorized to bring to adjudication all such vessels as they previously

* Supposed for November.

deemed liable to condemnation : He replied, that the case of every vessel must be decided by its own merits ; but that he conceived no vessel would be condemned under that instruction, which would not have been previously liable to the same sentence. I informed Lord Grenville, that I should communicate this instrument to you by the packet. He said he should likewise forward it by the same conveyance, and at the same time, would send an answer to my memorial on the king's instruction of the 8th of June, to be communicated to you by Mr. Hammond.

I remain, dear sir, &c.

THOMAS PINCKNEY.

To the Secretary of State.

Instructions to the commanders of our ships of war and privateers that have or may have letters of marque against France. Given at our Court at St. James's, the 8th day of January, 1794.

WHEREAS by our former instruction to the commanders of our ships of war and of privateers, dated the sixth day of November, 1793, we signified that they should stop and detain all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony, and should bring the same with their cargoes to legal adjudication, we are pleased to revoke the said instruction, and in lieu thereof, we have thought fit to issue these our instructions to be duly observed by the commanders of all our ships of war and privateers that have or may have letters of marque against France.

1. That they shall bring in for lawful adjudication all vessels with their cargoes, that are laden with goods, the produce of the French West India Islands, and coming directly from any port of the said islands to any port in Europe.

2. That they shall bring in for lawful adjudication, all ships with their cargoes, that are laden with goods, the produce of the said islands, the property of which goods shall belong to subjects of France, to whatsoever ports the same may be bound.

3. That they shall seize all ships that shall be found attempting to enter any port of the said islands that is or

shall be blockaded by the arms of his majesty or his allies, and shall send them in with their cargoes, for adjudication, according to the terms of the second article of the former instructions, bearing date the 8th day of June, 1793.

4. That they shall seize all vessels laden wholly or in part with naval or military stores bound to any port of the said islands, and shall send them into some convenient port belonging to his majesty, in order that they, together with their cargoes, may be proceeded against according to the rules of nations.

The foregoing consisting of three letters, viz. one of 26th December, 1793, one of 2d and the other of the 9th of January, 1794, with their enclosures, from Mr. Pinckney, minister of the United States at London, are truly copied from the originals on file in the office of the department of state.

GEORGE TAYLOR, JUN. Chief Clerk.

April 3, 1794.

TRANSLATION.

M. Fauchet, Minister Plenipotentiary of the French Republic, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 7 Germinal, 2d year of the French Republic, one and indivisible.

As you are about to lay before the President a statement of the claims relative to the vexations and spoliations which your commerce has experienced, you will doubtless receive with pleasure some éclaircissements on the complaints, well or ill founded, which have been brought against privateers and two ships of war of the French Republic. You will not observe with less pleasure in my reply, that the National Convention has already done justice to some of the demands of the merchants of the United States, and are now occupied in satisfying some others.

In the list of complaints against the Republic of France, the complainants urge that *the French privateers do not less harass your commerce than those of the English.*

To this assertion I answer by two observations which I submit to your impartiality.

1. It is now some time since any more privateers have sailed out of the ports of France, and the number of those

which have been armed in our islands is not to be compared with those pirates which the islands of Bermuda alone send forth.

2. If any of your merchants have suffered any injury by the conduct of our privateers, (a thing which would be contrary to the intention and express orders of the Republick) they may, with confidence, address themselves to the French government, which will never refuse justice to those whose claims shall be legal.

I feel a pleasure in thinking, and saying to you, that it is not the fault of the French, if commercial property, even of enemy-nations, has not been respected amidst the horrors of war.

This proposition of natural right was made by one of our legislative assemblies to the British, who rejected it.

2dly. *It is imputed to two of our ships of war that they have committed enormities on your vessels.*

Should the fact be proved, the captains of those two vessels are as culpable towards France, as they are towards the United States, for having acted in a manner contrary to the instructions they have received: The government, upon information of the crime, will most certainly punish the authors of it. It would be unjust to accuse a nation generally for the act of some individuals, when that nation disavows their conduct, and repairs the wrongs which they have committed.

3d. *Certain acts of oppression in the courts of Admiralty are complained of.*

The oppressive acts of the admiralty courts need no longer be complained of, since, on the claims of merchants of the United States, the convention on the 8th November last passed a decree giving to the executive council the power of judging of the validity or invalidity of prizes. It is as follows:

“The national convention, after having heard the report of the committee of publick safety, decrees that all disputes arisen, or which may arise, on the validity or invalidity of prizes made by privateers, shall be decided, by way of administration, by the provisory executive council. The decree of the 14th Feb. (O. S.) attributing the judgment of these matters to the commercial tribunals is repealed.”

Copy agreeable to the original,

JH. FAUCHET.

The 4th allegation would require a long discussion, which I shall not undertake here; I shall only indulge myself in this single reflection, that the horrible system of violating the law of nations, in order to starve a people who cannot be conquered by force of arms, has not been invented by France, and that it would be as unjust as barbarous to require that she should allow provisions to pass to her enemies, while those destined for her are taken by them.

As to the embargo on American vessels, imperious circumstances, the salvation of the country, have imposed that measure; but the interests of no one will be injured; and to convince you of this, I recite an extract of a letter which I have just received from citizen Tallien, representative of the people at Bordeaux.

It is possible, he writes me, "That some malevolent persons may make use of this pretext (the embargo) to disturb the harmony existing between the Americans and us, or might represent this measure as a violation of treaties between the two nations: The interests of individuals may for a moment cause the general interest to disappear. It is then to you, brave republican and the true friend of your country, that we must consign the care of defending it to Congress (should the measure happen to be there calumniated)—say to our brethren that it is the intention of the committee of publick safety, the actual centre of the French government, to indemnify all the owners or captains, who by the operation of the embargo have been obliged to remain a length of time in France, and that the propositions, which soon will be made to them in the name of the committee, will be advantageous to both nations. In short, my friend, use every means of a frank republican negotiator, to convince our brethren the Americans, that, when occupied concerning the aggregate interests of the nation, we do not forget theirs, and they may be assured that they will always find in us faithful observers of the treaties, made with nations worthy of liberty."

The fifth and last allegation is, that a contract, the payment of which having been stipulated in cash, has been made in assignats. I am unacquainted with the fact, but I am assured that it is the intention of the National Convention

not to permit any injustice, and to repair such as shall have been committed.

I conclude my reflections, not doubting, sir, but that they will be received with the same interest as would be excited in France by the observations of our allies, to whom I always with new pleasure renew the assurance of the most perfect fraternity and eternal friendship on the part of the people of France. JH. FAUCHET.

Faithfully translated from the original, 29th March, 1794, by GEO: TAYLOR, JUN.

Philadelphia, April 3, 1794.

SIR,—You do me no more than justice, in believing, that I receive with pleasure the explanations, which your letter of the 29th ultimo contains. They inspire me with full confidence, that my representations on each complaint will be treated with candour; and assure me of redress, as far as truth will support my demands.

On my part, permit me here to repeat, what I have expressed in my letter on the vexations of our commerce, that my inquiry into the facts did not go beyond the allegations of the parties interested. My view was to present a summary only of the subjects of the remonstrances, lodged in my office; reserving the proofs for our interviews on the adjustment of the claims of retribution; delivering no opinion how far the charges were supported by evidence; and above all, not imputing to the French Republick the unauthorized misconduct of its ships of war.

I have the honour, sir, to be, &c.

EDM: RANDOLPH.

The Minister Plenipotentiary of the French Republick.

True copy, GEO. TAYLOR, JUN.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES RELATIVE
TO DESPATCHES FROM SPAIN AND LETTER FROM BRITISH
MINISTER. APRIL 15, 1794.

[See Vol. Confidential Documents.]

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CONGRESS.
MAY 12, 1794.

As the letter, which I forwarded to Congress on the 15th day of April last, from the minister plenipotentiary of his Britannick majesty to the Secretary of State, in answer to a memorial of our minister in London, related to a very interesting subject, I thought it proper not to delay its communication. But since that time, the memorial itself has been received, in a letter from our minister, and a reply has been made to that answer by the Secretary of State.—Copies of them are therefore transmitted.

GEORGE WASHINGTON.

London, January 28, 1794.

DEAR SIR,—Lord Grenville having told me that he would send the answer to my memorial on the grain trade to Mr. Hammond to be by him stated to you, I enclose a copy of that representation that you may have them both before you at the same time. I remain, &c.

THOMAS PINCKNEY.

The Secretary of State.

THE undersigned minister plenipotentiary of the United States of America has the honour of representing to lord Grenville, that the President of the United States has received information of the additional instructions to his majesty's ships of war and privateers dated the 8th of June, 1793, and that it is with great concern he finds they authorize measures which must materially injure the United States and abridge the rights to which as a neutral nation they are entitled: He has therefore directed the undersigned to expose to his majesty's government the demonstrations of the injury done to the United States by this act, firmly relying on the justice and friendship of his majesty for its discontinuance. The article of the additional instructions, which is deemed peculiarly injurious to the United States, is that which permits all vessels laden wholly or in part with corn, flour or meal, bound to any

port in France, to be stopped and sent into such port as may be most convenient, to be purchased by government, or to be released only on condition of security being given by the master that he will proceed to dispose of his cargo in the port of some country in amity with his majesty. It is conceived that this article is in opposition to the law of nations, which has for its basis reason and the usage of civilized countries ; for reason and usage have established that, when two nations are at war, those who choose to live in peace retain their natural right to pursue their agriculture, manufactures and other ordinary vocations ; to carry the produce of their industry for exchange to all nations belligerent or neutral, as usual ; to go and come freely without injury or molestation, and in short that the war among others shall be for them as if it did not exist. One restriction on their natural rights has been submitted to by nations at peace, which is that of not furnishing to either party implements merely of war, for the annoyance of the other, nor any thing whatever to a place blockaded by its enemy : What these implements of war are has been so often agreed, and is so well understood as to leave little question about them at this day : there does not perhaps exist a civilized nation in our common hemisphere, which has not made a particular enumeration of them in some of their treaties under the name of contraband ; from whence it clearly appears, that corn, flour and meal are not of the class of contraband, and consequently remain articles of free commerce. It is the common interest of mankind, that a culture, which like that of the soil furnishes sustenance and employment to so great a proportion of them, should not be interrupted or suspended because two nations are involved in war. It is also the interest of humanity, that those articles, which are destined for the destruction of mankind, should not be classed with those intended for their subsistence. If any nation has a right to shut up to the produce of another all the ports of the earth, except her own and those of her friends, she may shut them up also, whereby the neutral nation would be confined to her own ports : or if from motives of policy she were to abstain from this last exclusion, yet the opposite party would certainly have an equal right to pursue the same measure, whereby the same consequence would ensue.— But for a nation to have its peaceable industry suspended

and its citizens reduced to idleness and want by the act of another, is a restriction which reason and justice do not authorize.—Neither can it be deemed sufficient for the belligerent powers to say, “we and our friends will purchase your produce;” because it is obvious that this effectually destroys the right all people have of judging for themselves what market best suits them, and precludes them from the enjoyment of the necessities and comforts which might be obtained in return from any other independent country.

It being evident therefore that the state of war existing between Great Britain and France furnishes no legitimate right to either to interrupt the agriculture of the United States, or the peaceable exchange of its produce with all nations, the exercise of it will be as lawful hereafter as now, in peace as in war; for no ground acknowledged by the common reason of mankind authorizing the act now, unacknowledged ground may be taken at any time; and a practice is hereby begun, to which no time, no circumstances prescribe any limits, and which strikes at the root of the agriculture of the United States, that branch of industry which gives food, clothing and comfort to the bulk of their inhabitants.

This act too tends directly to draw the United States from that state of peace in which they wish to remain, for it is an essential character of neutrality to furnish no aids (not stipulated by previous treaty) to one party which are not furnished with equal readiness to the other. If the United States permit corn to be sent to Great Britain and her friends, they are equally bound to permit it to France: to restrain it would lead to war with France; and between restraining it themselves and acquiescing in the restraint by her enemies is no difference—She might consider this acquiescence as a pretext, and the United States would see themselves plunged by this measure into a war with which they meddle not, and which they wish to avoid, if justice to all parties and from all parties will enable them to avoid it. In the case where they found themselves obliged by treaty to withhold from the enemies of France the right of arming in their ports, they thought themselves in justice bound to withhold the same right from France also, and they did it: were they to withhold supplies of provisions, they would by the same principle of impartial neutrality be bound to

withhold them from her enemies also, and thus either shut to themselves all the ports of Europe where corn is in demand, or make themselves parties in the war. This is a dilemma to which the President trusts the justice and friendly disposition of his majesty will not permit him to reduce the United States, especially as he is conscious that they have given no cause for it by any part of their conduct : he therefore doubts not that on this exposition of the injury resulting to the United States, a measure so detrimental to them will be discontinued, and compensation made to such of their citizens as may have suffered thereby.

In thus unfolding to his majesty's government the objections to this measure, the undersigned is particularly instructed to declare that the United States found their expectation of justice from his majesty's government on a strict observance of it on their parts, and to offer the most explicit assurance of their earnest desire to live on terms of the best friendship with this country.

THOMAS PINCKNEY.

True copy,

GEO. TAYLOR, JUN.

Philadelphia, April 11, 1794.

SIR,—In a letter which I had the honour of addressing to your predecessor on the 12th of September last, I communicated to him an additional instruction, given by his majesty's order in council of the 3th of June, 1793, to the commanders of all British armed vessels, and accompanied it by some few observations, explanatory of the principles in which it had originated. But as Mr. Pinckney has recently presented to his majesty's ministers a memorial relative to the instruction in question, I am directed to submit to you, sir, some farther remarks on this subject, in reply to that gentleman's representations.

I have formerly stated, that, at the period of issuing this instruction, the situation of France was notoriously such as to point out the prevention of its receiving supplies as one of the means of reducing it to reasonable terms of peace, and that this species of commerce being almost entirely prosecuted by the then ruling party of France, it could no longer be regarded as a mercantile speculation of individuals, but as an immediate operation of the very persons

who had declared and were carrying on war against Great Britain. Notwithstanding this situation and these circumstances, his majesty's government, so far from proceeding to the extent which the law of nations would have warranted, adopted regulations, by which its limits were contracted, and its rigour was qualified: for the instruction only prevented the French from being supplied with *corn*, omitting all mention of *other* provisions, and especially of *rice*, one of the staple agricultural productions of the United States—and even with regard to *corn*, the regulation, instead of a confiscation of the cargoes, assured to the neutral proprietors a full indemnification for any loss they could possibly sustain.

It is not essential to the present question to enter into an examination of the different definitions, which, as you, sir, well know, have been given of *the law of nations*, and of the consequent diversity of sentiment that has prevailed, as well with respect to the principles on which it is established, as to the obligations which it prescribes. I shall therefore not hesitate to admit the broad basis which Mr. Pinckney has assigned to it—reason and the usage of civilized countries: but I must premise, that, though the principle of reason be immutable, its dictates are sometimes governed by circumstances, or liable to different interpretations; and that the usage of nations is fluctuating. Hence then, in order to ascertain the real nature of the system which is established on this basis, it is necessary to recur to the result of the experience and wisdom of ages and of nations, as it is collected and exposed by those authors who have treated this subject. If it be examined by this criterion, it is manifest, that the right of a belligerent power to stop and even to seize supplies of provisions going to its enemies is strongly inculcated in all the *ancient* authors, and is recognised by Vattel, whose writings contain a much more modified and limited system in these respects than that which is to be found in the books of authority, on which the practice and law of nations rest: and in point of fact it would I doubt not be found on investigation, that the milder usage with respect to provisions is of a recent date. In regard to the collateral argument which Mr. Pinckney deduces from the enumeration of articles denominated *contrebande de guerre*, as contained in particular treaties—it is proper for me to ob-

serve that those treaties, are not declaratory of the law of nations, but are restrictions and modifications of that law by special agreements between the contracting parties ; and are consequently neither binding on other powers, nor even on the parties themselves in other cases. But even conceding the argument to be well founded, the conclusion from it would be favourable to the regulation enforced by his majesty's order of council : for of the two only existing treaties, by which his majesty's conduct is regulated towards nations neutral in the present war, one (that with Sweden) expressly includes *provisions* in the enumeration of articles *contrebande de guerre* :* and professor Martens, one of the most accurate and unquestionably one of the most modern writers on the law of nations, asserts (page 390, vol. 2d) that *corn* and other *provisions*, even *brandy and tobacco*, are comprehended under the denomination of *contrebande de guerre* in some treaties of commerce. The same author, in the section to which I have referred, adds that the maritime powers (especially since the end of the *last* century) have introduced a practice of declaring to the neutral nations, at the commencement of a war, the articles which would be regarded as contraband : and the sole limitation, which he appears to assign to declarations of this nature, is—that they shall not operate to the prejudice of particular treaties which may subsist between the neutral nations and the belligerent power promulgating such declarations. I shall certainly not controvert Mr. Pinckney's position—"that it is the common interest of mankind that a culture which, like that of the soil, furnishes sustenance and employment to so great a proportion of them, should not be interrupted or suspended because two nations are involved in war : " But I must at the same time be permitted to observe that it is at least a questionable point whether the " interests of humanity " be not best consulted by a recurrence on the part of a belligerent power to all the *honourable* means of imposing on an enemy the *necessity*, of submitting to reasonable terms of accommodation, and of thereby abridging the duration of the calamities of war. The expectation of imposing this necessity is the motive, under the influence of which

* Vide the eleventh article of the treaty of alliance concluded on the 21st of October, 1661, between King Charles the second and his Swedish majesty.

this instruction has been issued, and is the “*acknowledged ground*” of my former explanations of it—is founded in justice and reason—is warranted by precedent—and is inculcated by those writers whose sentiments on questions of this kind are entitled to every degree of authority and respect.

The only part of Mr. Pinckney’s representation, upon which it remains for me to offer any farther remarks, is his apprehension lest the acquiescence of the United States in this instruction, being considered by France as a pretext and as a violation of neutrality, that nation might derive from those considerations the right of pursuing a similar course. But it is notorious that the conduct of the actually ruling party of France with relation to provisions the property of a neutral power, both *previously* (as it is indeed declared in the decree of the National Convention of the 9th of May) and subsequently to the instruction in question, has been such as that which Mr. Pinckney appears to imagine that this measure on the part of the British government would have a tendency in future to produce.

Having now, sir, I hope satisfactorily evinced that the right of a belligerent power to detain and even seize provisions destined for its enemy is not a *novel* doctrine, but is consonant to the law of nations, as explained by the best authors on the subject, and is even recognised by the stipulations of particular treaties—I cannot avoid expressing my conviction that the modification contained in the instruction of the 8th of June, to which it is the intention of the king’s government to adhere, will be regarded by this government, as more favourable to the commerce of America than the general principle of the law of nations, and consequently as a proof of his majesty’s sincere disposition to cultivate and maintain with the United States the most cordial harmony and good understanding. I have the honour to be, &c.

GEO: HAMMOND.

Mr. Randolph, Secretary of State.

(Received April 12, 1794.)

True copy,

GEO: TAYLOR, JUN.

Philadelphia, May 1, 1794.

SIR,—Your letter of the eleventh ult. renews a discussion here, which was supposed to be committed, with

greater convenience, to the ministers of our respective nations in London. For my own part, as the additional instructions of June 8th, 1793, are essentially connected with that system, which has since appeared in more ample form, I wished to consign to our envoy extraordinary, as well the representations against them, as those truly serious remonstrances which the instructions of November 6th, 1793, and the vexations and spoliations, lately experienced, cannot fail to produce. But, with the deep conviction, which I feel, that the United States have pursued with honour, the path of neutrality; that his Britannick majesty cannot with justice upbraid our conduct, and that the opinions which you are pleased to avow, tend to wrest from us the benefits due to our impartiality and love of peace; it is impossible to pass over the doctrines, contained in your letter, which seem to have been the germ of subsequent harsher measures.

In your exposition of the instructions of the 8th of June, as collected from your letter to my predecessor on the 12th of September last, and from your remarks on Mr. Pinckney's memorial, you rely on two principal arguments. 1st. That by the strictness of the right derived from the law of nations respecting contraband, and the actual situation of France, vessels of the United States, loaded wholly or in part with corn, meal or flour, bound to any port in France, or any port occupied by the armies of France, may at least be lawfully stopped and detained; and 2d that the rigour of this right has been softened, not only by exempting *other* provisions, and especially *rice*; but also assuring to the neutral proprietors even of cargoes of *corn*, a full indemnification, instead of confiscating them. You next endeavour to remove the discontents excited by the preference established against the United States in favour of Denmark and Sweden, in the case of a blockaded or besieged port, by ascribing it entirely to the stipulation of treaties; and to repel the apprehension expressed by Mr. Pinckney, that these instructions would become a precedent for a similar severity from France, by affirming that France had begun it before they were formed.

1st. The epoch at which the distinction between a contraband and lawful commerce, was first settled among nations, is perhaps, neither known nor material. We have no reason to presume, that it originated in treaty, because it

is deducible from the internal law of nations, as denominated by Vattel, independently of treaty. For, as one government, by carrying the instruments of war to the enemies of another, without an obligation, contracted prior to the commencement of hostilities, would thereby abandon its neutrality; so could not the individuals who are the members of the former government, be free of offence towards the latter, in carrying like supplies. Such a fitness for war then, as is indicated by what are called *instruments of war*, is the original criterion of contraband. Corn, meal, and flour, do indeed support men; and men wield arms. But they support men no less in peace than in war; and if by a circuit of construction, food can be *universally* ranked among military engines,—what article, to which human comfort of any kind can be traced, is not to be registered as contraband? In some peculiar circumstances, it must be confessed, corn, meal, and flour are so; as in a blockade, siege or investment. There the exclusion of them directly and obviously goes to the reduction of the place: but neutral commerce, is, in this instance, infringed, only, where the exclusion, if continued without interruption, would be decisive in its effect. Should it be replied, that this position would withdraw naval stores, as being suited to peace or war, from the list of contraband; I shall be ready to examine, whether upon principle they partake not the qualities of ordinary merchandise: whether the ancient writers who first pronounced against them, did not live (*to use the language of a high British authority on the same occasion) when commerce was but little understood,—its rights were not sufficiently regarded—war was too much a season of rapine—they who entered into it, meant less to conquer than to plunder; and when naval stores were destined to hostile uses only; whether their dictum has not been the basis on which some later writers have proceeded; whether the modern usage of nations has not cast away the opinion as obsolete; and above all, whether corn, meal, and flour, do not hold a pre-eminence over naval stores, by being for the most part incapable of any immediate application, but to the sustenance of life.

When Mr. Pinckney refers to treaties for the enumeration of contraband, you answer that “they are not decla-

* Jenkinson, p. 3.

ratory of the law of nations ; but are restrictions and modifications of that law by special agreements between the parties"—“not binding on other powers, nor even on the parties themselves in other cases ;” and that in the treaty of England with Sweden on the 21st of October, 1661, *provisions* are expressly included as contraband.

After premising that treaties as well as statutes often reenact a pre-existing law, a few of the English treaties most important to the present purpose shall be consulted.

We are at a loss to determine, why, in 1645, Cromwell omitted provisions from his treaty with the United Provinces, if they were contraband. The nerve of his character was not apt to stop short of his rights, or to discard any possibility, by which he might accomplish his designs.

In the treaty of commerce between France and England in 1667, corn, barley, other grain, and every thing tending to the nourishment of life are said not to be contraband.

In the treaty of commerce between Charles the second, king of England, and the states of Holland, in 1668, the liberty of trade is granted to all goods which are not called contraband ; and no goods are there so called but arms and things which serve for the use of war ; those serving for sustenance and the support of life being excluded in terms.

By the treaty of Utrecht in 1713, between England and Spain, wheat, rye, barley, other grain, and generally whatsoever belongs to the sustaining and nourishing of life, are excepted from contraband.

In the treaty of commerce and navigation between England and Russia, in 1766, only military stores are contraband.

In 1782, Denmark as well as Russia concur in the same ideas.

And the last expression of the sense of Great Britain in the year 1786, in the treaty with France, was, that wheat, barley, any other kind of corn, were not to be reckoned contraband.

In these treaties, grain, being nearer the boundary between contraband and lawful articles, was more liable to dispute ; and therefore for greater caution, and greater caution only, was specified : Jenkinson in some degree favours this latter idea, as to the more early treaties, the model of those which followed. He observes that “about

the middle of the last century, when the commercial regulations, which at present subsist between the European powers, first began to be formed, it became absolutely necessary to call back the attention of governments to those principles of neutral right, from whence they had strayed; and to fix and determine, what was the law of nations by the articles of their respective treaties."

But let this be otherwise, these treaties are powerful in another direction. For many years more than a century has Great Britain been in the habit of allowing in her commercial treaties, a free scope, even in the season of war, to the means of human subsistence. The period between the years 1663, and 1786, was a witness to changes in manners, in learning, and in politicks. England went through her revolutions in all. She has been seen in the field of negotiation with powers of different orders; with one against whom she has been employed in perpetual rivalry and war; with others whose bias of commerce and the fruits of whose agriculture could most annoy her by supplies to her enemies; with Holland, with France, with Spain, and with Russia. I pretend not to assert that England has been immutable in conceding and accepting this immunity in her treaties. But if in that period she has deviated, without any mixture of those considerations, which weigh at the moment only, your access to her archives, and consequently to better information, will enable you to correct me. If, however, you appeal to the convention between England and Holland in 1689, as a proof of the contrary, I must cite the animadversions of Jenkinson and Vattel. "Such therefore at this time was the avowed opinion of Holland, and England was induced to join with her in this convention, exceeding thereby those bounds of equity and moderation which she had almost always practised in this point before, and which she will, I hope, most faithfully observe for the future. The northern crowns who were particularly affected by this prohibition, contended very vehemently against it: in answer to their objections were urged the circumstances of affairs, the danger of Europe, and the mighty strength, of that ambitious power, which if some extraordinary effort was not made, would bring mankind

* Jenkinson, vol. i. p. 15

under its subjection. It is remarkable that Puffendorf, who owed his fortune and employments to one of those northern crowns, was of opinion in this case against them; and thought that the convention might be justified. It is not meant here at present, either to censure or commend it: circumstances may sometimes make a thing to be lawful, which considered by itself, would be unjust; but such times are truly unhappy, when necessity must be pleaded in support of a right."

"* England and the United provinces having agreed in the treaty of Whitehall, signed on the 22d August, 1689, to notify to all states not at war with France, that they would attack, and previously declared every ship bound to, or coming out of the harbours of that kingdom, to be a lawful prize. Sweden and Denmark, from whom some ships had been taken, entered into a counter treaty on the 17th of March, 1693, for maintaining their rights, and procuring just satisfaction. And the maritime powers, perceiving that the complaints of the two crowns were well grounded, did them justice."

All the major nations of Europe, and in addition to these, Denmark and Sweden, have followed the same practice in their treaties; I shall not say *exclusively*; because this would imply a greater intimacy with their foreign relations, than at this distance we possess. But if it will not be too assuming to conjecture under what influence they may have occasionally departed from these tenets, permit me to hazard a belief that the examples of such a departure, and especially in certain high-toned declarations of Holland in the last century, and of Louis the 14th of France will be found in motives, which bear no affinity to, and can neither illustrate nor weaken the principle.

These then are striking features of the *customary* law of nations as defined by Vattel. "When, says he, a custom is generally established, either between all the polished nations in the world, or only between those of a certain continent, as of Europe, for example, or those who have a more frequent correspondence, if that is custom in its own nature indifferent, and much more, if it be a wise, and useful one, it ought to be obligatory on all those

* Vat. lib. 3. chap. vii. § 112.

nations, who are considered as having given their assent to it, and they are bound to observe it towards each other while they have not expressly declared that they will not adhere to it. But if that custom contains any thing unjust, or illegal, it is of no force, and every nation is under an obligation to abandon it; nothing being able to oblige or permit a nation to violate a natural law."

Although the United States be without the European circle, they not only have a frequent correspondence with Europe, but in various publick acts, have proclaimed their abhorrence of enlarging the catalogue of contraband. I appeal to their treaty with France, to their treaty with Holland, to their treaty with Sweden, and to their treaty with Prussia. A passage in the last has abolished much of the embarrassment to which contracts are exposed— "And in the same case of one of the contracting parties being engaged in war with any other power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandise heretofore called contraband, such as arms, ammunition, and military stores of every kind; no such articles carried in the vessels, or by the subjects or citizens of the parties to the enemies of the other shall be deemed contraband, so as to induce confiscation, or condemnation, and a loss of property to individuals," &c.

That such a provision is wise and useful your own candour admits. You express yourself thus—"I shall certainly not controvert Mr. Pinckney's position, that it is the common interest of mankind, that a culture, which like that of the soil, furnishes sustenance and employment to so great a proportion of them, should not be interrupted or suspended, because two nations are involved in war."

But what if these evidences of custom were less forcible than they are? When I review the events of Europe for more than a century past, and remark how much they have been crowded and diversified; how strong mercantile enterprise has been; how seldom other nations have suffered, and that Great Britain has not suffered at all from this burden on neutral commerce, I must be indulged with the inquiry, if upon the supposition of the ancient law of nations, being as you contend, its modern mitigations, by the refinement of society, towards the rest of the world, are to be dead to them? If they are, is it because

they are sovereignties of a recent date, and in the western hemisphere, although whensoever they might, they have narrowed the sphere of contraband? Would not the nations of Europe deem the United States indecently refractory if they should assume the privilege of dispensing with any prevailing modification of that law? Would Great Britain herself be silent? Let then the inconveniences and advantages of these alterations be to us reciprocal.

As you have selected the treaty of England with Sweden in 1661, in opposition to Mr. Pinckney, it has been reserved for a test of the preceding doctrines. I acknowledge that provisions are contraband according to that treaty: but in what manner? Does it recognise them as contraband, under the law of nations? This cannot be maintained because the treaties, for more than a hundred years past, announcing them not to be contraband, are more numerous than those of a different complexion, and therefore enjoy a better title to be declaratory of the law of nations. Does it break the uniformity of the English treaties on this head? One instance and no more being exhibited, it is presumable that no more can be quoted, unless it be between England and Holland in Feb. 1673-4, which may be accounted for on different grounds, and was quickly cancelled by the treaty of December, 1674, or that in 1689, of which we have already spoken. If this be true, it deserves attention, that in two treaties, immediately preceding this of 1661, to wit, in 1654 and 1656, between the same parties, the definition of contraband does not embrace provisions. If this variation has not been wrought by peculiar causes, it is at any rate overwhelmed by the mass of conflicting authorities, to which England has herself given birth, at different stages of her commerce.

You next resort to the civilians, as being friends to the instructions.

Until Grotius in 1625 published his work on war and peace, the subject had been much neglected. "He" says Vattel, "broke up the land, and it is not surprising that his mind, overcharged by an immense variety of objects and citations, which entered into his plan, could not always acquire those distinct ideas, so necessary in the sciences." He admits I own, that if a nation cannot defend itself without those things which are sent to its enemy.

such as money, provisions, ships and naval stores, *necessity* will give that nation a good right to them, upon condition of restitution, if there be no just cause to the contrary. This is no palliative for the instructions, because Great Britain not only abounded in corn, meal and flour, but her European ports were shut by prohibitory duties against their importation from the United States.

He afterwards treats of the right of one enemy to intercept provisions going to another. "If the supplies sent thither, hinder the execution of my designs, and the sender might have known as much; as, if I have besieged a town, or blockaded a port, and thereupon I quickly expect a surrender or a peace, that sender is obliged to make me satisfaction for the damage that I suffer on his account." Upon what data the citizens of the United States could calculate, that their accustomed trade would hinder the execution of the designs of Great Britain, will be hereafter touched upon. But let their speculative opinion be such. Barbeyrac the commentator of Grotius, whose notes enhance the dignity of the text, and are the efforts of an enlightened pen, in an enlightened age, when the law of nations had been critically investigated, liberates us from every dilemma in this respect.

"Provided, that in furnishing corn, for instance, to an enemy besieged, and pressed by another, it is not done with design to deliver him from that unhappy extremity, and the party is ready to sell the same goods also to the other enemy, the state of neutrality and liberty of commerce leave the besieger no room for complaint."

"There is the more reason for this, if the seller had been accustomed to the traffick in the same goods before the war."

He puts the strongest possible case.—that of a siege, and yet decides for the neutral. Your West Indies are conscious that we have been always ready to sell to them our corn, meal, and flour—Your merchants have enjoyed full liberty of purchase. Your own inquiry into our trade must have convinced you, that long before the war we were in the habit of exporting those commodities to France.

You are certainly correct in your estimate of Martens's elementary treatise on the modern law of nations, but are you equally so in inferring from his 274th section, that he

regards corn as contraband? That we may discover his genuine sense, it may be well to present together all the important sections on neutral commerce.

TRANSLATION.

§ 270.

“ Of neutral commerce, according to the universal law of nations.

“ One of the most important points relatively to the conduct which the neutral powers are to hold, is the commerce to be carried on with the enemy. Now in considering the thing on the part of the neutral power, the right which that power has in time of peace to sell and transport every sort of merchandise to each nation which is willing to carry on this commerce with it, also remains to it, when a war takes place between two powers, so that it may permit its subjects to transport every sort of merchandise, and even arms or warlike stores to the two powers engaged in the war, or to that one of them with which this commerce may be continued or established most advantageously ; as long as the state does not meddle itself with it, either by prohibiting the commerce with one or both the parties who are at war, it would seem that she does not, by that, deviate from the duties of neutrality. However, the belligerent power having a right to hinder its enemy from being re-inforced by whatever *serves for the use of war*, the necessity of its situation may authorize it to prevent these merchandises arriving to the enemy, still it ought to confine itself to the holding of these merchandises during the war, or to the appropriating of them to herself, on paying the value of them to the neutral proprietor. But this right to confiscate such merchandise, or even the vessels carrying them, seems not to belong to the enemy, except when (*b*) the neutral power has violated the laws of neutrality, or when this confiscation is made at a place amenable to the laws of the sovereign exercising it.”

“ (*b*) The pretext of depriving, by this confiscation, the neutral subjects of the desire of carrying on such a commerce, seems not in strictness sufficient to justify the punishment of those who do not offend us ; nor does the right of necessity appear to extend to that.”

§ 271.

“Entire prohibition of commerce.”

“In consequence of this last principle, and of the rights of every sovereign in general, the belligerent power may even prohibit all commerce with the enemy throughout the extent of its territory and maritime dominion, in the places and provinces of the enemy, of which it has rendered itself the master, and even with the places which it holds so blockaded as to be able to prohibit the entry therein of every stranger. In all these cases it may subjoin to its prohibitions the penalties, either of confiscation of the effects, or of the vessels, or the corporal punishment of those who exercise this commerce.”

§ 274.

“Principles of the modern law with regard to neutral commerce. Contraband merchandise.”

“But the modern law of nations differently disposes of several points which concern the commerce of neutral powers with the enemy. In the first place it is generally acknowledged that a neutral power should abstain from transporting to the enemy the merchandises which serve directly for war (*b*) and the use of which is not doubtful. The catalogue of these contraband merchandises is differently formed by the treaties of commerce, and in some it has even been extended to certain merchandises, which do not serve directly or solely for war, in as much as they might be useful to the enemy (*c*) whilst in others the latter are expressly ranged among merchandises, the commerce of which is lawful, which must also be presumed when nothing has been regulated concerning it.

“Besides this, the maritime powers have begun, particularly since the end of the last century, to make, at the commencement of war, declarations, in order to notify to the neutral powers the merchandises which they would

“ (*b*) Such as arms, ships of war,” &c.

“ (*c*) Such as ship timber, cables, hemp, specie, grain, brandy, tobacco, and other articles of life,” &c.

regard as contraband, and to prevent them from the penalties they should exercise on those who might transport them to the enemy. These declarations are less laws than notices; but their effect cannot be extended to the powers with whom treaties subsist, which cannot be injured by them."

§ 275.

"Penalty attached to contraband commerce.

"A nation which authorizes this contraband commerce, is deemed to violate the obligations of neutrality; and the belligerent power is permitted to confiscate such merchandises and even sometimes the vessels. This latter point seems hitherto to have formed a rule when the proprietor of the vessel had voluntarily loaded her with contraband, either in the whole or in part. At present, however, almost all the commercial treaties have abolished this custom entirely, or at least they do not admit it, except in some cases. But where no treaties exist, the conduct observed by the belligerent powers is rather inconstant."

§ 276.

"Freedom of neutral commerce acknowledged in Europe.

"But as to merchandises which are not contraband, it is generally adopted, that it is permitted to the neutral powers to trade in them with the enemy, and to transport them to the enemy, except in places blockaded, with which all commerce is interdicted. However, neutral merchant vessels ought in open sea to submit to the customary visitation, or that which is fixed by treaties in almost an uniform manner."

Faithfully translated from the original, by

GEO. TAYLOR, JUN.

May 8, 1794.

The deductions from this author are,

1. That the neutral rights extend to every sort of merchandise, and even to arms or military stores, with certain restrictions, which do not affect grain.

2. That the places of an enemy, with which commerce is interdicted, are those only which are possessed by the adversary power, or blocked up, so as to prevent the entrance of every stranger.

3. That treaties of commerce have sometimes classed provisions among contraband, and sometimes among lawful merchandise, and

4. That a commerce in merchandises which do not serve directly or solely for war, is to be presumed lawful, when nothing has been regulated concerning it.

Which, sir, of these deductions confront the doctrines now advanced?

I anticipate, from a passage in your letter, the answer which will be made; that there is no other limitation upon the will of a nation to increase the number of contraband, than that treaties shall not be violated: if this were tenable, the law of nations, instead of being a stable rule, would fluctuate according to the caprice and force of the belligerent parties. But Martens obviates such a consequence by observing, that "these declarations are not so much laws, as notices or warnings." The law is, therefore, to be sought for elsewhere than in those notices—it must have existed before.

Let us now turn from the question of contraband to your second vindication of the instruction, namely, the probability of its successful operation against France. To this end you state, that "at the period of issuing the instruction, the situation of France was notoriously such as to point out the prevention of its receiving supplies, as one of the means of reducing it to reasonable terms of peace." And again, that "it is at least a questionable point, whether the interests of humanity be not best consulted by a recurrence on the part of the belligerent power to all honourable means of imposing on an enemy the necessity of submitting to reasonable terms of accommodation, and of thereby abridging the duration of the calamities of war," and that "the expectation of imposing this necessity is the motive, under the influence of which this instruction has been issued, and is the acknowledged ground of your former explanations of it." &c.

You will not conceive, sir, that I meddle with this branch of the subject farther, than the stress which you lay upon it demands. In defence therefore of the commercial rights

of the United States, I must be pardoned for asking, if the actual situation of France does in truth afford a clear and unequivocal prospect of defeat by famine? The soil, the climate, the population, which can spare from war a quota for labour, the agriculture, the total of the internal resources of France, induce so much of doubt at least as to sanction our complaints against the check to our commerce. If the two seas which wash her territory, and her coasts of many hundred miles, can be so guarded as to render the importation of subsistence impracticable, if she cannot send forth naval convoys competent to protect her transports of provisions from abroad, still who can pronounce upon firm ground that she can be starved? If for the possible difficulty which a scantiness of external supplies might create, if from the possible clamours and tumult which the want of imported bread might stir up, or if from any other speculation, a neutral trade of many years standing is to be suppressed, some of the belligerent parties, in every war, will seize pretexts for harassing neutrals.

To counterbalance the innocence of individuals, and drive all from the course of their commerce, upon the vague suspicion, that the ruling power of France is gathering supplies under their names, as you seem to intimate, is to humiliate and to punish.

Vattel remains to be examined. "Commodities, he says, particularly used in war, and the importation of which to an enemy is prohibited, are called contraband goods: such are arms, military and naval stores, timber, horses, and even provisions in *certain junctures*; when there are hopes of reducing the enemy by famine.

Well might the principle which has been canvassed, the usage of nations, and the opinions of other respectable writers, be repeated to controvert this dictum. But without dwelling longer on such considerations, if the judge of these hopes of reducing the enemy by famine be one of the warring powers, it must be guided, upon this, as upon every other occasion, affecting an independent people, by the great duty, that "each nation ought to contribute all in its power to the happiness and perfection of other nations." It ought not to thwart, without demonstrable justice, the rights of another nation. It ought not to be seduced by sanguine expectations of advantage, to forget our

full claim to whatsoever neutrals can reasonably require. At the very moment when our citizens were navigating the ocean, ignorant of any penalty which they had to avoid, as soon as the instructions had undergone the forms of office, they were the victims. Those who undertake to judge for us should remember what the impression must be, if the proclamation of the President of the United States reached London before they were published; that we were not advised of Great Britain having associated herself in the war through any official channel, for months after it had been brought hither by report, and that the instructions of the 8th of June, operating immediately, and not handed to us by you until the 12th of September, were disturbing our commerce for more than three months, before we were admonished of our danger.

Denmark and Sweden, it is true, are involved in the words of the first clause in the instructions. But if the late tables of Arnould are to be believed, the interest of those nations, in the direct exports of corn, meal, and flour to France, and the carrying trade in those articles thither, has received no wound, of which they greatly complain. So that in fact "Of the nations inhabiting the shores of the Atlantick ocean, and practising its navigation," the instructions essentially interfere with the United States alone.

2. With our rights thus fortified, we have no room for discussing the moderation which you attribute to the exercise of your pretensions. We are not free from injury by the exemption of rice, or the forbearance to confiscate corn, meal, and flour. We are not compensated for our injuries, because no more than two out of three of our agricultural productions are wrested from the channels, chosen for them by ourselves. Compute, sir, the value of those prohibited goods, and their importance to the growth of our shipping. Although it will always be a serious object to keep our rice markets unclogged, the losses by the instructions are neither covered nor concealed by the indulgence to rice. Its freedom plainly speaks that France was not presumed to be relieved by it; or else the belief of a famine by arresting corn, meal, and flour, was vain. Hence the profit of this exportation would be an inadequate atonement even upon your own scale, for the other wrongs. Farther, the original destination of the

corn, meal, and flour to France, was dictated by France being notoriously a better market than any other, to which they had access; especially when they were to be conducted into the British ports, under the stigma of being culprit property. It will be necessary therefore, before the temper of the instructions be fairly appreciated, to compare the actual allowance in the English ports with the prices in the true port: to determine what the degree of damage is to a merchant, whose agent lives in France, to have his ship compelled into England; how long it may be before she can be accommodated to this unlooked for situation; what capital may be rendered for some time inactive; what preparations for a return cargo may be ruined at the intended port; and what derangements may overtake an individual whose study and fortune have been fixed to one scheme? When all these items shall be assembled, then, and not till then, shall we know the rate of compensation which is afforded by the omission to confiscate. But, after all, the real question is, whether any belligerent power can thus fetter neutral trade? Nay, if the instructions had terminated only in the demand of security, one of the conditions, upon which vessels may be rescued from the admiralty, even this would have been vexatious. It is very rare, that security can be obtained in a foreign land, where neither an owner nor a correspondent resides without an hypothecation of the vessel.

3. In your letter of the 12th of September, 1793, you contend that the exception in favour of Denmark and Sweden has reference to existing treaties with those powers, and cannot therefore give just grounds of umbrage or jealousy to other powers, between whom and Great Britain no such treaties subsist. As the instructions in the instance of a blockade light upon the United States alone, of all the Atlantick nations, when our remonstrances upon the captures shall be heard, it will probably be again propounded, as it has already been, without any reply in your last letter; "what might not we on the same ground have withheld from Great Britain during the whole course of the present war, as well as the peace which has preceded it." Reluctant as I am to kindle fresh contests, this topick will not at present be dilated. But surely to exact the last iota of a right awakens an unsocial feeling.

4. It is of no consequence, nor do I pretend to ascertain, from whom we have received the first injury. Complaints against one nation cannot be discharged by severity from another. But Mr. Pinckney argued with fitness, that if the United States acquiesced in the instructions of Great Britain, as being consonant to the law of nations, they must acquiesce in the pleasure of all the world, who by waging war may destroy every foreign market. From any other people, whose acts offend us, we shall expect satisfaction. We expect no more from you.

No, sir, we have laboured to cultivate with the British nation perfect harmony. We have not attempted by a revival of maxims, which, if ever countenanced, are now antiquated, to blast your agriculture or commerce. To be persuaded, as you wish, that the instructions of the 8th of June, 1793, are in a conciliatory spirit, is impossible. And be assured, sir, that it is a matter of sincere regret to learn the intention of your government to adhere to them, notwithstanding our representations, which utter, as we flatter ourselves, the decent but firm language of right. I have the honour, sir, to be, &c.

EDM. RANDOLPH.

Mr. Hammond, Minister Plenipotentiary.

True copy,

GEO. TAYLOR, JUN.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CONGRESS, MAY 20, 1794.

IN the communications, which I have made to Congress during the present session, relative to foreign nations, I have omitted no opportunity of testifying my anxiety to preserve the United States in peace. It is peculiarly, therefore, my duty at this time to lay before you the present state of certain hostile threats against the territories of Spain in our neighbourhood.

The documents which accompany this message, develop the measures which I have taken to suppress them, and the intelligence, which has been lately received.

It will be seen from thence, that the subject has not been neglected; that every power vested in the Executive on such occasions has been exerted; and that there was reason to believe, that the enterprise, projected against the Spanish dominions, was relinquished.

But it appears to have been revived upon principles which set publick order at defiance, and place the peace of the United States in the discretion of unauthorized individuals. The means already deposited in the different departments of government, are shown by experience not to be adequate to these high exigencies, although such of them as are lodged in the hands of the Executive shall continue to be used with promptness, energy and decision proportioned to the case. But I am impelled by the position of our publick affairs to recommend, that provision be made for a stronger, and more vigorous opposition, than can be given to such hostile movements under the laws as they now stand.

GEO: WASHINGTON.

To his Excellency the Governour of Kentucky. Philadelphia, August 29, 1793.

SIR,—The commissioners of Spain, residing here, have complained to the President of the United States, that certain persons at this place are taking measures to excite the inhabitants of Kentucky to join in an enterprise against the Spanish dominions on the Mississippi; and in evidence of it, have produced the printed address now enclosed. I have it, therefore, in charge from the President to desire you to be particularly attentive to any attempts of this kind among the citizens of Kentucky, and if you shall have reason to believe any such enterprise meditated, that you put them on their guard against the consequence, as all acts of hostility committed by them on nations at peace with the United States are forbidden by the laws, and will expose them to punishment: and that in every event, you take those legal measures which shall be necessary to prevent any such enterprise.

In addition to considerations respecting the peace of the general union, the special interests of the state of Ken-

tucky would be particularly committed, as nothing could be more inauspicious to them than such a movement, at the very moment when those interests are under negotiation between Spain and the United States. I have the honour to be, &c.

TH: JEFFERSON.

Kentucky, Oct. 5, 1793.

SIR,—I have just now been honoured with your favour of the 29th of August, wherein you observe, that the Spanish commissioners have complained to the President of the United States, that certain persons are taking measures to excite the inhabitants of Kentucky to join in an enterprise against the Spanish dominions on the Mississippi. I think it my duty to take this early opportunity to assure you, that I shall be particularly attentive to prevent any attempts of that nature from this country. I am well persuaded, at present, none such is in contemplation in this state. The citizens of Kentucky possess too just a sense of the obligations they owe the general government, to embark in any enterprise that would be so injurious to the United States. I have the honour to be, &c.

ISAAC SHELBY.

The Hon. Thomas Jefferson, Esq.
Secretary of State.

*To his Excellency the Governour of Kentucky. Germantown,
November 6, 1793.*

SIR,—I have received from the representatives of Spain here information, of which the following is the substance. That on the second of October, four Frenchmen of the names of La Chaise, Charles Delpeau, Mathurin, and Gignoux, set out in the stage from Philadelphia for Kentucky, that they were authorized by the minister of France here to excite and engage as many as they could, whether of our citizens or others, on the road or within your government, or any where else, to undertake an expedition against the Spanish settlements within our neighbourhood, and in event to descend the Ohio and Mississippi and attack New Orleans, where they expected some naval co-operation: that they were furnished with money for these

purposes and with blank commissions to be filled up at their discretion. I enclose you the description of these four persons in the very words in which it has been communicated to me.

Having laid this information before the President of the United States, I have it in charge from him to desire your particular attention to these persons, that they may not be permitted to excite within our territories, or carry from thence any hostilities into the territory of Spain. For this purpose, it is more desirable that those peaceable means of coercion should be used which have been provided by the laws, such as the binding to the good behaviour these, or any other persons exciting or engaging in these unlawful enterprises, indicting them, or resorting to such other legal process, as those learned in the laws of your state, may advise. Where these fail, or are inadequate, a suppression by the militia of the state has been ordered and practised in the other states. I hope that the citizens of Kentucky will not be decoyed into any participation in these illegal enterprises against the peace of their country, by any effect they may expect from them on the navigation of the Mississippi. Their good sense will tell them, that that is not to be effected by half measures of this kind, and that their surest dependence is on those regular measures which are pursuing and will be pursued by the general government, and which flow from the united authority of all the States.

I have the honour to be, &c.

TH: JEFFERSON.

Le signalement du Sieur La Chaise, taille de 5 pieds 9 $\frac{1}{2}$ pouces, figure allongée, cheveux rond, grand favorisé, taille bien faite.

Signalement de Delpeau, taille de 5 pieds 9 pouces, figure allongée, les yeux enfoncées, grand cheveux allongé, un peu blondin, pale de la figure.

Signale de Gignoux, taille de 5 pieds 6 pouces, cheveux et sourcils chaten, nes gros, bouche moyenne menton rond.

January 13, 1794.

SIR,—After the date of my last letter to you, I received information that a commission had been sent to general

Clarke with powers to name and commission other officers, and to raise a body of men; no steps having been taken by him (as far as has come to my knowledge) to carry this plan into execution, I did not conceive it was either proper or necessary for me to do any thing in the business.

Two Frenchmen, La Chaise and Delpeau, have lately come into this state; I am told they declare, publicly, they are in daily expectation of receiving a supply of money, and that as soon as they do receive it, they shall raise a body of men and proceed with them down the river. Whether they have any sufficient reason to expect to get such a supply, or any serious intention of applying it in that manner, if they do receive it, I can form no opinion.

I judged it proper, as the President had directed you to write to me on this subject, to give you this information, that he may be apprized as fully as I am of the steps which have been and are now taking here in this matter. If the President should hereafter think it necessary to hold any further communication with the executive of this state on this subject, I wish him to be full and explicit as to the part which he wishes and expects me to act. That if what is required of me should, in my opinion, be within my constitutional powers, and in the line of my duty, I may hereafter have it in my power to show that the steps which I may take were not only within my legal powers, but were also required by him.

I have great doubts, even if they do attempt to carry their plan into execution (provided they manage their business with prudence) whether there is any legal authority to restrain or punish them, at least before they have actually accomplished it. For if it is lawful for any one citizen of this state to leave it, it is equally so for any number of them to do it. It is also lawful for them to carry with them any quantity of provisions, arms and ammunition; and if the act is lawful in itself, there is nothing but the particular intention with which it is done that can possibly make it unlawful; but I know of no law which inflicts a punishment on intention only, or any criterion by which to decide what would be sufficient evidence of that intention, if it was a proper subject of legal censure.

I shall, upon all occasions, be averse to the exercise of any power which I do not consider myself as being clearly and explicitly invested with, much less would I assume a power to exercise it against men who I consider as friends and brethren, in favour of a man whom I view as an enemy and a tyrant. I shall also feel but little inclination to take an active part in punishing or restraining any of my fellow citizens for a supposed intention only to gratify or remove the fears of the minister of a prince, who openly withholds from us an invaluable right, and who secretly instigates against us a most savage and cruel enemy.

But whatever may be my private opinion as a man, as a friend to liberty, an American citizen, and an inhabitant of the Western waters, I shall at all times hold it as my duty to perform whatever may be constitutionally required of me as governour of Kentucky by the President of the United States. I have the honour to be, &c.

ISAAC SHELBY.

The Hon. Thomas Jefferson, Esq.
Secretary of State.

Philadelphia, March 29, 1794.

SIR,—The letter which your excellency addressed to my predecessor on the thirteenth of January, 1794, has been laid before the President of the United States, and I have it in charge from him to recall to your view the state of things, with which it is connected.

You were informed, sir, on the 29th of August, 1793, that the commissioners of Spain had complained of attempts to excite the inhabitants of Kentucky to an enterprise against the Spanish dominions on the Mississippi; that the President requested you to be attentive to circumstances of this kind: that if such an enterprise was meditated, your citizens ought to be put on their guard against the consequences; and that you should adopt the necessary legal measures for preventing it; as acts of hostility, committed by our citizens against nations at peace with the United States, were forbidden by the laws, and would subject the offenders to punishment.

That every effectual exhortation might be combined with a sense of duty, it was at the same time represented

to you, that, "In addition to considerations respecting the peace of the general union, the special interests of the state of Kentucky would be particularly committed; as nothing could be more inauspicious to them, than such a movement, at the very moment when those interests were under negotiation between Spain and the United States."

Your excellency's answer on the fifth October, 1793, gave a satisfactory assurance of your readiness to counteract any design from Kentucky against the Spanish dominions on the Mississippi; of your persuasion that none such was then in contemplation in your state; and of your citizens possessing too just a sense of the obligations, which they owe to the general government, to embark in any enterprise so injurious to the United States.

It was, therefore, with full confidence in your zeal, that on the sixth of November, 1793, upon the representation of the commissioners of Spain, you were farther informed, that on the second of October, 1793, four Frenchmen, of the names of La Chaise, Charles Delpeau, Mathurin and Gignoux, had set out in the stage from Philadelphia to Kentucky, authorized by the then minister of France here to engage as many as they could, whether of our citizens, or others, on the road, or within your state, or elsewhere, to undertake an expedition against the Spanish settlements within our neighbourhood, and in event, to descend the Ohio and Mississippi, and to attack New Orleans, where naval co-operation was expected; and that they were furnished with money for these purposes, and with blank commissions, to be filled up at their discretion. Your excellency was requested to check these hostilities, and in doing so, to prefer those peaceable means of coercion which had been provided by the laws, (such as the binding to the good behaviour or indicting) or to resort to such other legal process, as those learned in the laws of your state might advise. The letter conveying the foregoing intelligence proceeds thus: "Where these fail, or are inadequate, a suppression by the militia of the state has been ordered and practised in other states. I hope that the citizens of Kentucky will not be decoyed into any participation in these illegal enterprises against the peace of their country, by any effect which they may expect from them on the navigation of the Mississippi.

Their good sense will tell them, that is not to be effected by half measures of this kind; and that their surest dependence is on those regular measures which are pursued, and will be pursued by the general government, and which flow from the united authority of all the states."

After the impression made by your letter of the 5th of October, 1793, you will naturally conclude, how difficult it was to reconcile it with your last of the 13th of January, 1794.

As the constitution and laws of the United States are to govern the conduct of all, so cannot it be well imagined, that the President intended to impose upon your excellency any departure from them. You were asked to prefer peaceable means of coercion; and for that purpose, to consult those who were learned in the laws of your state to designate legal process. I shall not presume upon the imperfect knowledge, which can be obtained here, of the jurisprudence of Kentucky, to determine, whether any, or what species of process was admissible. I beg leave, however, to observe, that if, in the opinion of the judges, no preventive or other step could be supported, the President required none. My predecessor, in his letter of Nov. 6, 1793, arguing from what is usual in the United States, and recollecting what prevails in Virginia, many of the laws of which are understood to be incorporated in your code, naturally suggested the propriety of binding to the good behaviour, and indicting. And, indeed, what government can be so destitute of the means of self-defence, as to suffer, with impunity, its peace to be drawn into jeopardy by hostilities, levied within its territory, against a foreign nation, order to be prostrated at the will of tumultuous individuals, and scenes of bloodshed and civil war to be introduced.

You intimate a doubt, sir, whether the two Frenchmen, La Chaise and Delpeau, can be restrained or punished, before they have actually accomplished their plan; and assign as a reason for the doubt, that any number of your citizens may lawfully leave your state, and carry with them any quantity of provisions, arms and ammunition. Hence you conclude that these acts being lawful, a particular intention cannot render them unlawful, and that no criterion exists for deciding such an intention. If there be no peculiarity in the laws of Kentucky, and it be allow-

able to reason from general principles, or an analogy to the practice of other states, we might expect from a candid revision of these sentiments, that a contrary result would arise in your mind. That foreigners should meddle in the affairs of a government, where they happen to be, has scarcely ever been tolerated, and is often severely punished. That foreigners should point the force of a nation, against its will, to objects of hostility, is an invasion of its dignity, its tranquillity, and even safety. Upon no principle can the individuals, on whom such guilt shall be fixed, bid the government to wait, as your excellency would seem to suppose, until their numbers shall defy the ordinary animadversions of law; and until they are incapable of being subdued, but by force of arms. To prevent the extremity of crimes, is wise and humane, and steps of precaution have therefore been found in the laws of most societies.

Nor is this offence of foreigners expiated or lessened by an appeal to a presumed right in the citizens of Kentucky to enlist under such banners, without the approbation of their country. In a government instituted for the happiness of the whole, with a clear delineation of the channels, in which the authority derived from them must flow, can a part only of the citizens wrest the sword from the hands of those magistrates whom the whole have invested with the direction of the military power? They may, it is true, leave their country; they may take arms and provisions with them; but, if these acts be done, not on the ground of mere personal liberty, but of being retained in a foreign service for purposes of enmity against another people, satisfaction will be demanded, and the state to which they belong cannot connive at their conduct, without hazarding a rupture. The evidence of a culpable intention is perhaps not so difficult as your excellency imagines; it is at least a familiar inquiry in penal prosecutions, and ought not to be an objection to your interference on this occasion. But here suffer me to repeat, that the President wishes you to do nothing more, than the laws themselves permit. Let them have their free course by such instructions as you may think adequate and advisable; and I trust that they will prove competent to rescue the United States from a painful altercation with a foreign sovereign.

As these unlawful assemblages of military force may assume various forms, Congress have not been unmindful, that the civil arm may sometimes be unequal to the task of sustaining civil authority. They have, therefore, by an act of May the 2d, 1792, conferred on the marshals and their deputies the same power in executing the laws of the United States, as sheriffs and their deputies in the several states have by law in executing the laws of their respective states: They have rendered it lawful for the President, in case of invasion, to call forth the militia, or to issue his orders for that purpose to such officer of the militia as he shall think proper. They have empowered him to call forth the militia of one state for the suppression of an insurrection in another, under certain circumstances; and to subdue, by the militia, any combinations against the laws, which may be too powerful for ordinary judicial proceedings.

Thus far have I addressed your excellency upon the constitutional and legal rights of the government; which perhaps are in strictness the only topics belonging to the present occasion. But as it may not be known that the navigation of the Mississippi has occupied the earliest labours of the Executive, and has been pursued with an unremitted sincerity, I will lay before you such a sketch of the pending negotiation, as may be communicated, consistently with the respect due to the nation in treaty with us, and the rules observed in such cases.

The primary subject in the instructions to Mr. Carmichael, who has resided for a considerable time at Madrid as *Chargé des Affaires* of the United States, has been to throw open to your commerce that river to its very mouth. In December, 1791, it was *verbally* communicated to the Secretary of State by one of the commissioners of Spain here, that his Catholick majesty, apprized of our solicitude to have some arrangements made respecting our free navigation of the Mississippi, and the use of a port thereon, was ready to enter into a treaty at Madrid. And great indeed was that solicitude. For although this overture was not, as to the place, what might have been desired, yet was it attended to without delay, and accepted.

As a proof of the interest taken by the government on this subject, I might mention, that not only was Mr. Carmichael, who had acquired an acquaintance with persons

and circumstances in Spain, made a member of the commission, but Mr. Short was added, as being more particularly informed of the navigation to be treated of.

Instructions, comprehensive, accurate and forcible, were prepared by my predecessor; and if at this stage of the business it were proper to develop them to publick view; I should expect, with certainty, that those who are the most ardent for the main object would pronounce that the Executive has been deficient neither in vigilance nor exertions.

For many months have our commissioners been employed in this important affair at Madrid. At this moment they are probably so employed. The delays, which forms may have created, the events of Europe, and other considerations which at this season cannot, with propriety, be detailed, dictate a peaceable expectation of the result.

Let this communication, then, be received, sir, as a warning against the dangers to which these unauthorized schemes of war may expose the United States, and particularly the state of Kentucky. Let not unfounded suspicions of a tardiness in government prompt individuals to rash efforts, in which they cannot be countenanced, which may thwart any favourable advances of their cause, and which, by seizing the direction of the military force, must be repressed by law, or they will terminate in anarchy. Under whatsoever auspices of a foreign agent these commotions were at first raised, the present minister plenipotentiary of the French Republick has publicly disavowed and recalled the commissions which have been granted.

I cannot, therefore, doubt, that, when your excellency shall revise this subject, you will come to this conclusion, that the resentments which you profess as a private man, a friend to liberty, an American citizen, and an inhabitant of the Western waters, ought not to interfere with your duty as governour of Kentucky; and that, on the other hand, the contemplation of those several characters, under which you have considered yourself, ought to produce a compliance with those measures which the President of the United States has consigned to your discretion and execution. I have the honour to be, &c.

EDM. RANDOLPH.

Copy of the first, second, and ninth sections of "An Act to provide for calling forth the militia," &c.

SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state or states most convenient to the place of danger or scene of action, as he may judge necessary to repel such invasion; and to issue his orders for that purpose to such officer or officers of the militia as he shall think proper. And in case of an insurrection in any state, against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such state, or of the executive, (when the legislature cannot be convened) to call forth such number of the militia of any other state or states, as may be applied for, or as he may judge sufficient to suppress such insurrection.

SEC. II. *And be it further enacted,* That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, the same being notified to the President of the United States, by an associate judge, or the district judge, it shall be lawful for the President of the United States to call forth the militia of such state to suppress such combinations, and to cause the laws to be duly executed. And if the militia of a state where such combinations may happen, shall refuse, or be insufficient to suppress the same, it shall be lawful for the President, if the legislature of the United States be not in session, to call forth and employ such numbers of the militia of any other state or states most convenient thereto, as may be necessary; and the use of militia, so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session.

SEC. IX. *And be it further enacted,* That the marshals of the several districts, and their deputies, shall have the

same powers in executing the laws of the United States as sheriffs and their deputies in the several states have by law, in executing the laws of their respective states.

The foregoing are truly copied from the records and files in the office of the Department of State.

GEO: TAYLOR, JUN.

May 20, 1794.

Copy of a Letter from the Secretary at War to his Excellency Arthur St. Clair, Governour of the Northwestern Territory, dated Germantown, near Philadelphia, November 9, 1793.

SIR,—I have the honour to transmit a copy of a letter written by the Secretary of State to the governour of Kentucky, relative to the design of certain Frenchmen, mentioned therein, to excite some military enterprise against the possessions of Spain upon the Mississippi, with which power the United States are at peace.

The President of the United States has instructed me to request, that you would consider the letter to the governour of Kentucky as written to yourself, and that you take all the measures in the course of the laws for the prevention of the design, in the manner suggested by the Secretary of State. But if the design should have assumed such an aspect as to bid defiance to the operation of the laws, that then you use the militia of your government to prevent the progress of the design; or that you request the officer commanding the troops of the United States in your neighbourhood, in the name of the President of the United States, to afford you such assistance in the effectual suppression of such design, and apprehension of the offenders as the nature of the case may require. You will please to report any proceedings of yours which may occur in consequence of this letter, in order that the same may be submitted to the President of the United States.

JNO. STAGG, Jun. Ch. Clk. W. D.

May 19. 1794.

Copy of a Letter from the Secretary of War to his Excellency the Governour of Kentucky, dated Germantown, near Philadelphia, Nov. 9, 1793.

SIR,—I have the honour to enclose your excellency a letter from the Secretary of State, relative to the designs of four Frenchmen, to excite some enterprise against the possessions of Spain, on the Mississippi, with which power the United States are at peace. To permit such a measure in any of the United States would be a breach of our neutrality, and of course involve the United States in the existing war between the belligerent parties, and therefore the enterprise is not to be tolerated in the least degree. The Secretary of State has suggested how this design may be prevented by the usual course of the laws: But if this mode should be ineffectual, I am instructed by the President of the United States to request that your excellency will use effectual military force to prevent the execution of the plan of the said Frenchmen, or any other persons who may support or abet their design; for the lawful expenses of which the United States will be responsible.

Any proceedings which may take place in consequence of the letter from the Secretary of State, or of this letter, you will please report, in order to be submitted to the President of the United States.

True copy,

JNO. STAGG, JUN. Ch. Clk. W. D.

May 19, 1794.

Copy of a Letter from Major General Wayne, to the Governour of Kentucky, dated Head Quarters, Greenville, January 6, 1794.

SIR,—I have the honour to enclose your excellency a copy of a letter to the commanding officer of the legionary cavalry, stationed between George Town and Lexington in the state of Kentucky, directing him to receive and obey your excellency's orders, should you find any occasion for their services in suppressing the design mentioned in the enclosed extracts of letters from governour St. Clair and the Secretary of War: the original letter from

the war office you have undoubtedly received before this period.

Should the force now offered be deemed insufficient, or should more be wanted, it shall not be withheld upon this interesting occasion; notwithstanding our proximity to the combined force of the hostile Indians, who are now kept in double check by the troops on this ground, and those posted on the field of battle of the 4th November, 1791, which we took possession of on the 24th ultimo.

The measures which I have taken for the security of the northwestern frontiers I hope and trust will be found salutary and effectual. I have the honour to be, &c.

A. WAYNE.

His Ex. Isaac Shelby, Esq. Governour, Kentucky.

True copy,

JNO. STAGG, JUN. Ch. Clk. W. D.

Extract of a Letter from Lexington, Kentucky, dated March 31, 1794.

"Monday—An agent from general Clarke, properly authorized by him, made his appearance here, for the express purpose of purchasing, on the credit of general Clarke, such articles as were absolutely necessary, in order that he might depart immediately—

"He called on me, showed me his authority, and offered to purchase my two boats. The articles wanted were two, viz. five hundred pounds powder; and one ton cannon ball. The purchases were completed;—the powder is at this instant in my cellar;—to-morrow it leaves this place for the falls. The boats will start next week;—their provisions are all ready, and the 15th April is appointed for the day of their departure from the falls.

"Friday, April 4th—Yesterday the powder left this place."

The writer is expected in town in a few days.

Extract of a Letter from the Secretary of War to Major General Wayne, dated March 31, 1794.

"THE idea of a post to be established at Fort Massac was held forth on the 17th of May last, and left optional

with you ; but certain circumstances, at that time, prevented your adopting the idea. The late intention of some restless people of the frontier settlements, to make hostile inroads into the dominions of Spain, renders it indispensable that you should immediately order as respectable a detachment as you can to take post at Fort Massac ; and to erect a strong redoubt and block house with some suitable cannon from Fort Washington.

“The officer who should command ought to be a man of approved integrity, firmness and prudence.”

Besides the directions for erecting the works, the supplies, discipline and police of the garrison, he ought to be instructed somewhat in the following manner.

Secret and confidential. It has not been unknown to you, that a number of lawless people residing on the waters of the Ohio, in defiance of the national authority, have entertained the daring design of invading the territories of Spain. The atrocity of this measure, and its probable effects, are pointed out in the proclamation of the President of the United States herewith delivered to you.

“If this design should be persisted in, or hereafter revived, and any such parties should make their appearance in the neighbourhood of your garrison, and you should be well informed that they are armed and equipped for war, and entertain the criminal intention described in the President’s proclamation, you are to send to them some persons in whose veracity you could confide ; and if such person should be a peace officer he would be the most proper messenger ; and warn them of their evil proceedings, and forbid their attempting to pass the fort at their peril. But if, notwithstanding every peaceable effort to persuade them to abandon their criminal design, they should still persist in their attempts to pass down the Ohio, you are to use every military means in your power for preventing them, and for which this shall be your sufficient justification, provided you have taken all the pacifick steps before directed.”

True extract,

JNO. STAGG, JUN. Ch. Clk. W.D.

Copy of a Letter from M. Williamson, jun. to Captain Thomas Martin, dated Rock Landing, April 9, 1794.

DEAR CAPTAIN,—Agreeable to your request, I have made every inquiry about Murray; he has not been here, and if he should come, captain K'Kinsey will certainly send him to the fort. I shall set out for Carr's Bluff this evening, and if I should see or hear of him, shall send him immediately up; and if any more of the federal troops should desert, with an expectation of being received as one among the adventurers against East Florida, they will be mistaken, by being sent back to their quarters. General Clarke requested me to urge the necessity of not interfering with government, particularly in that of persuading the troops of the United States to desert and join them; and that if he could find out that any officer or soldier had acted in that manner, contrary to the interests of the United States, should be given into the hands of the law, and be punished as the law directs.

I am with respect, yours, &c.

M. WILLIAMSON, JUN.

Colonel Kar delivered your advertisement to captain M'Kinsey with a special command, that the within mentioned deserter be safely taken to your quarters, provided he should come to this place, as well as any other that might desert, with an idea to shelter with the republicans, or
F—— to F——.

M. W. JUN.

The above is *correctly* copied from the original, remaining on file in the War Office of the United States.

JNO. STAGG, Ch. Clerk.

May 13, 1794.

Extract of a Letter from Constant Freeman, Agent for the Department of War, in Georgia, to the Secretary of War, dated Fort Fidius, April 18, 1794.

“WE have been for a long time held in suspense by the different reports which have circulated, relative to certain persons being employed in this state, to recruit a corps of troops for the service of France. There cannot now be

any doubts remaining upon this subject. Officers have been appointed, and are now acting under the authority of the French Republick. Parties of recruits have already marched to the rendezvous appointed for them. Several men of this corps have crossed the Oconee, and encamped opposite to Greenesborough. A small party was for some days opposite to the Rock Landing; they have since marched to Carr's Bluff to join with those that had assembled at that place. The general rendezvous we are told is to be on the river St. Mary. An agent is appointed to furnish the supplies, and he has for that purpose received ten thousand dollars. A person, who was formerly the contractor's clerk at this post, is employed by him to purchase 4000 rations of provisions. He has gone down the country to execute this business.

On the 8th instant a colonel Carr and major Williamson came to this garrison: They stayed the day and night with captain Martin: They are said to be officers in the French legion. This was confirmed by major Williamson, who showed captain Martin a letter of instructions which he had received from general Clarke, directing him to repair to Fort Phillips, the Rock Landing, and Carr's Bluff, for the purpose of paying to the recruits of the French legion an allowance for mileage from their homes to the places of rendezvous. He showed captain Martin a list of the men whom he had paid, and who are encamped on the other side of the Oconee, opposite to Greenesborough, under the command of the late lieutenant Bird, who is now a captain in the said legion; and he also showed captain Martin his saddle bags, and told him that he had more than a thousand dollars in them for the purposes above mentioned; and he further informed him, that general Clarke would cross the Oconee in ten days from that time to take the command, and that colonel Carr would be one of the adventurers. Major Williamson has been employed as paymaster.

Colonel Carr told me, that large detachments had marched from the back settlements of South Carolina and from the state of Kentucky. That the men were to be engaged for three months, and were to receive bounties of land in the provinces of East and West Florida and Louisiana, which they were to conquer from the Spaniards. That M. Genet is appointed a major general, and is to command

in chief, and that measures would be taken to conciliate the Creeks, that the legion might march through their country.

The next day they left this garrison and proceeded on their journey to Carr's Bluff. That morning a soldier deserted from captain Martin's company, and as it was apprehended he had joined the party of the French legion then incamped opposite to the Rock Landing, capt. Martin sent a message to major Williamson, requesting him that the man might be returned. He has received the enclosed letter as an answer, which I have desired him to give me, that I might send it to you. This letter confirms what I have above written relatively to maj. Williamson being connected with this business.

There are many other persons named as officers in this new corps, but as it would be rather imprudent to mention them without some evidence of the fact, I forbear to send you their names.

It appears that the Spanish government in the Florida is greatly alarmed at the preparations which are making to invade these provinces, and the governour of East Florida has made complaint to the governour of this state, who has issued his proclamation, dated the fifth of last month, forbidding all persons joining with these adventurers, or aiding or assisting them in any way whatever.

Although, sir, you may have been fully informed through other channels of the above facts, I conceive it highly proper that I should give you such farther information therein as is to be obtained in this quarter. It doth not, however, appear, that the officers of this new legion make any great regress in the recruiting service; and it is generally believed, by the most sensible and orderly inhabitants of this country, that the proposed expedition of these adventurers will fail."

I do certify, that the foregoing is a *true extract* from the *original letter*, on file in the War Office of the United States.

JNO. STAGG, Jun. Clk.

May 13, 1794.

MR. JOHN S. GANO, of Cincinnati, North Western Territory, came through Kentucky, was at Lexington and

Frankfort six days, and left Lexington on the 8th or 9th of April.

He says, that the expedition of gen. Clarke, to open the free navigation of the Mississippi, which had been suspended apparently for want of money, had again revived, and it was said owing to a supply of money which had arrived by a Frenchman, said to be a major, but whose name the informant does not recollect.

That the boat builders and other artificers for the expedition had again recommenced, vigorously, their work at the rapids of the Ohio : That some persons of Kentucky, who had been appointed officers, had sold their property by auction.

That the measure of the expedition was openly advocated, and not opposed by any considerable numbers, but some did speak against it. That the President's proclamation had been received in Cincinnati, but he did not see any of them in Kentucky.

That they had provided some cannon and ammunition, and Mr. Gano was informed that they were casting more cannon at the iron works in Kentucky.

That it was understood that the inhabitants of Lexington had subscribed ammunition.

That Mr. Charles Smith, of Kentucky, informed Mr. Gano, that he had actually received a commission of a major ; that upon the arrival of the French major with the money, he had received orders to hold himself in readiness to join with his troops at the rapids of the Ohio ; but having more maturely reflected upon the business, he enclosed his commission to the said French major.

Extract of a Letter from Major Henry Gaither, commanding the federal troops in Georgia, to the Secretary of War, dated St. Mary's, April 13, 1794.

“ THE French are going on with an expedition against the Floridas from this place, and appear to have many friends in this undertaking among the inhabitants of this state. There is now at anchor within musket shot of my fort the sloop of war Las Casas, of eighteen guns, with two hundred men, most of them French, and one company of them infantry ; they are last from Charleston—They say there are thirteen sail, equally large and well manned.

yet to come from different parts in the United States. There is a recruiting post at Temple, eighteen miles up the river from this; the last accounts say, they have eighty men, and expect three hundred from the upper part of this state. This armament and land force they talk of will be sufficient, they say, to take the Floridas as soon as they please. The sloop of war on her first arrival saluted the fort. I have not returned the salute—the captain and officers are much offended—this has caused me to begin a three gun fascine battery in front of the fort, and next the river, for my own defence. I shall be very particular with the French troops, and avoid every thing like giving offence. I don't mean to leave this until matters get better settled."

The foregoing is a true extract from the original letter on file in the War Office of the United States.

JNO. STAGG, Jux. Ch. Cl. W. D.

May 15, 1794.

May 6, 1794.

MR. JOHN HOLLAND, an inhabitant of Savannah, left that place on the 26th ult. in the sloop Harmony, capt. M'Cormack, and arrived here on the 5th of May.

This gentleman informs, that the French sloop of war *Las Casas*, supposed to belong to the French fleet lately from the Chesapeake, had landed some men on the island of Amelia, to the southward of the St. Mary's; and that they were there erecting some works, and had landed some cannon. That general Clarke was on the Georgia side of the St. Mary's with a few men; their numbers said to be various, from 150 to 300, but were daily augmenting; and it was supposed intended to join the French, and to take the oaths of allegiance to them, in order to invade the Floridas. Clarke was said to have provisions and ammunition. The people of Savannah strongly reprobated the measure. A person, name unknown, attempted to beat up for volunteers in Savannah, but he was forced to desist, and to give bail in the federal court.

A captain of a privateer, named Curvin, also attempted to beat up, but was also obliged to give bail and desist.

The governour was daily expected in Savannah.

A col. Hammond from Savannah is one of the principal officers. He was of the continental troops during the late war.

War Department, May 14, 1794.

SIR,—By certain information, recently received from Georgia, it would appear that a general Clarke and others have organized themselves into a military corps, within the limits of the United States, and are thence about setting out upon some military expedition against the dominions of Spain, with whom we are at peace.

Any comments upon the illegality and criminality of such a conduct is entirely unnecessary to your Excellency, as you have already issued your proclamation against the design.

But it may be necessary that further and more effectual measures be taken to prevent, entirely, the expedition, and bring to punishment the authors, actors, and abettors thereof; otherwise the United States may become responsible for the consequences.

I am therefore desired by the President of the United States to request that your excellency will, if the same should be necessary, take the most energetick and decisive measures within your power for suppressing the said design. If the circumstances should require the employment of the militia, I am authorized to assure you, that it may be done at the expense of the United States; and I am also directed to put under your direction the regular troops of the United States; for which purpose I have given lieut. col. Gaither the necessary orders herein enclosed. And I have also further directed John Habersham, Esquire, the agent for furnishing the supplies in Georgia, to afford every necessary aid of provisions and quarter-master's stores, which you may require for this object. I have the honour to be, &c.

H. KNOX,
Secretary of War.

His Ex. the Governour of Georgia.

True copy, JNO. STAGG, JUN. Ch. Clk. W. D.

Extract of a Letter from the Secretary of War, to Lieutenant Col. Gaither, dated May 14, 1794.

“SIR,—If the governour of Georgia should call upon you to assist him with the publick force under your com-

mand, for the purpose of suppressing an illegal combination of men, alleged to be organized within the United States for the purpose of invading the dominions of Spain, you are promptly and cordially to place yourself and all the troops and military stores under his orders for the said purpose."

True extract, JNO. STAGG, JUN, Ch. Clk. W. D.

MESSAGE

OF THE PRESIDENT OF THE UNITED STATES TO CONGRESS,
MAY 21, 1794.

I LAY before you in confidence, sundry papers, by which you will perceive the state of affairs between us and the six nations, and the probable cause to which it is owing. —And also, certain information, whereby it would appear that some encroachment was about to be made on our territory, by an officer and party of British troops. Proceeding on a supposition of the authenticity of this information, although of a private nature, I have caused the representation to be made to the British minister, a copy of which accompanies this message.

It cannot be necessary to comment upon the very serious nature of such an encroachment, nor to urge, that this new state of things suggests the propriety of placing the United States in a posture of effectual preparation for an event, which, notwithstanding the endeavours making to avert it, may, by circumstances beyond our control, be forced upon us.

GEORGE WASHINGTON.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CON-
GRESS. MAY 23, 1794.

I LAY before you the copy of a letter from the minister plenipotentiary of his Britannick majesty, in answer to a

letter from the Secretary of State, communicated to Congress yesterday; and also the copy of a letter from the Secretary, which is referred to in the above mentioned letter of the minister.

GEO. WASHINGTON.

Philadelphia, May 20, 1794.

SIR,—It cannot be unknown to you, that a speech, said to be addressed on the 10th of February, 1794, to several Indian nations, and ascribed to the governour general of his Britannick majesty at Quebec, has appeared in most of the publick prints in the United States. With so many circumstances of authenticity—after remaining so long without contradiction; it might have justified us in inquiring from you, whether it was really delivered under British authority. Our forbearance thus to inquire is conformable with the moderation which has directed the conduct of our government towards Great Britain, and indicates at the same time our hope from the declarations of yours, that its views would prove ultimately pacifick, and that it would discountenance every measure of its officers, having a contrary tendency.

Even now, sir, while I entertain a firm persuasion, that in assuming this speech to be genuine, I cannot well err; I shall be ready to retract the comments, which I am about to make, if you shall think proper to deny its authenticity.

At the very moment when the British ministry were forwarding assurances of good will, does Lord Dorchester foster and encourage in the Indians hostile dispositions towards the United States. If it was a part of the American character to indulge suspicion; what might not be conjectured as to the influence, by which our treaty was defeated in the last year, from the assembling of deputies from almost all the nations, who were at the late general council on the Miami; and whose enmity against us cannot be doubtful? How nearly would that suspicion approach to proof, were we to recollect that so high an officer as himself, would not rashly hazard this expression: “I should not be surprised if we are at war with the United States in the course of the present year; and if we are, a line must then be drawn by the warriors.”

But this speech only forbodes hostility : the intelligence, which has been received this morning, is, if true, hostility itself. The President of the United States has understood through channels of real confidence, that governour Simcoe has gone to the foot of the rapids of the Miami, followed by three companies of a British regiment, in order to build a fort there.

Permit me then to ask, whether these things be so? It has been usual for each party to a negotiation, to pay such a deference to the pretensions of the other, as to keep their affairs in the same posture, until the negotiation was concluded. On this principle, you complained, in your letter of the 5th of July, 1792, of the jurisdiction, attempted to be exercised under the state of Vermont, within the districts occupied by the troops of your king ; and demanded, that our government should suppress it, from respect to the discussion, which was pending. On this principle, you were assured, that proper measures should be adopted. On the same principle you renew on the 10th of March, 1794, a similar application ; and are answered that the measures of the government should correspond with its assurances. Accordingly, although the forts, garrisons and districts, to which your letters relate, are confessedly within the limits of the United States ; yet have our citizens been forbidden to interrupt you in the occupancy of them. What return then have we a right to expect.

But you will not suppose, that I put the impropriety of the present aggression upon the pendency of the negotiation. I quote this only to show the contrast between the temper observed on your part towards us and on our part towards you. This possession of our acknowledged territory has no pretext of statu quo on its side ; it has no pretext at all : it is an act, the hostility of which cannot be palliated by any connection with that negotiation : it is calculated to support an enemy whom we are seeking to bring to peace.

A late mission of the United States to Great Britain is an unequivocal proof, after all that has happened, of the sincere wish of our government to preserve peace and a good understanding with your nation. But our honour and safety require that an invasion shall be repelled.

Let me therefore inform you, sir, that I have it in charge from the President of the United States to request and

urge you to take immediate and effectual measures, as far as in you lies, to suppress these hostile movements; to call to mind that the army of the United States in their march against the enemy will not be able to distinguish between them, and any other people, associated in the war; to compare these encroachments with the candour of our conduct and the doctrines, which you have maintained; and to admonish those, who shall throw obstacles in the way of negotiation and tranquillity, that they will be responsible for all the unhappy consequences.

I have the honour to be, &c.

EDM. RANDOLPH.

Mr. Hammond, Minister Plenipoten- }
tiary of his Britannick Majesty. }

True copy, GEO. TAYLOR, JUN.

Philadelphia, May 22, 1794.

SIR,—In answer to your letter of the 20th current which I did not receive until late in the afternoon of yesterday, it is necessary for me to premise that, whatever may be my personal opinion with respect to the style and manner in which you have thought it proper to address me upon the present occasion, it is not my intention to offer any animadversion upon them, but to proceed with temper and candour to the examination of the subjects of your letter.

Though I never can acknowledge the right of this government to require from me, so categorically as you have required it, an explanation of any measure emanating from the governours of Canada, over whose actions I have no control, and for whose conduct I am not responsible, I am willing to admit the authenticity of the speech to certain Indian nations, to which you have alluded, and which you have ascribed to the governour general of his majesty's possessions in North America. But in order to ascertain the precise sense of the only passage of that speech to which you have referred, and of which you have given merely a partial citation, I shall quote the passage at length.

“CHILDREN,—Since my return *I find no appearance of a line remains, and from the manner in which the people of the States push on, and act, and talk on this side, and from*

what I learn of their conduct towards the sea, I shall not be surprised if we are at war with them in the course of the present year; and if so, a line must then be drawn by the warriors." From the context of this *whole* passage, it is manifest that lord Dorchester was persuaded, that the aggression which might eventually lead to a state of hostility, had proceeded from the United States: and so far as the state of Vermont, to which I presume his lordship principally alluded, was implicated, I am convinced that that persuasion was not ill-founded. For notwithstanding the positive assurances which I received from your predecessor, on the 9th of July, 1792, in answer to my letter of the 5th of the same month, of the determination of the general government to discourage and repress the encroachments which the state and individuals of Vermont had committed on the territory occupied by his majesty's garrisons—I assert with confidence that not only those encroachments have never been in any manner repressed, but that recent infringements in that quarter, and on the territory in its vicinity, have been since committed. Indeed if this assertion of mine could require any corroboration, I would remark that though the *space of fifty days* elapsed between my letter of the 10th of March, 1794, upon this subject, and your answer of the 29th of April, 1794, you did not attempt to deny the facts which I then stated, and which I now explicitly repeat.

In regard to your declaration that "governour Simcoe has gone to the foot of the rapids of the Miami, followed by three companies of a British regiment, in order to build a fort there"—I have no intelligence that such an event has actually occurred. But even admitting your information to be accurate, much will depend on the *place*, in which you assert that the fort is intended to be erected. And whether it be for the purpose of protecting subjects of his majesty residing in districts dependent on the fort of Detroit, or of preventing that fortress from being straitened by the approach of the American army. To either of which cases I imagine that the principle of the *status quo*, until the final arrangement of the points in discussion between the two countries shall be concluded, will strictly apply. In order however to correct any inaccurate information you may have received, or to avoid any ambiguity relative to this circumstance, I shall imme-

diately transmit copies of your letter, and of this answer as well to the governour general of his majesty's possessions in North America and the governour of Upper Canada, as to his majesty's ministers in England, for their respective information.

Before I conclude this letter, I must be permitted to observe that I have confined to the unrepressed and continued aggressions of the state of Vermont alone, the persuasion of lord Dorchester, that they were indicative of an existing hostile disposition in the United States against Great Britain, and might ultimately produce an actual state of war on their part. If I had been desirous of recurring to other sources of disquietude, I might, from the allusion of his lordship "to the conduct of this government towards the sea," have deduced other motives of apprehension on which, from the solicitude you evince to establish a "contrast between the temper observed on your part towards us and on our part towards you," I might have conceived myself justified in dilating. I might have adverted to the privateers originally fitted out at Charleston at the commencement of the present hostilities, and which were allowed to depart from that port, not only with the consent, but under the express permission of the governour of South Carolina. I might have adverted to the prizes made by those privateers, of which the *legality* was in some measure admitted by the refusal of this government to restore such as were made antecedently to the 5th of June, 1793. I might have adverted to the permission granted by this government to the commanders of French ships of war and of privateers to dispose of their prizes by sale in ports of the United States. I might have adverted to the two privateers *Le Petit Democrat* (now *la Cornelia*) and *le Carmagnol*, both which were illegally fitted out in the river Delaware, and which in consequence of my remonstrances and of the assurances I received, I concluded would have been dismantled: but which have remained during the whole winter in the port of New York *armed*, and now are, as I am informed, in a condition to proceed immediately to sea—I might have adverted to the conduct which this government has observed towards the powers combined against France in the enforcement of the embargo: for while the vessels of the former are subjected to the restrictions of that measure, those of the

latter have been permitted to depart from Hampton road, though three weeks had elapsed subsequently to the imposition of the embargo, though they were amenable to its operation, and though they were chiefly laden with articles "calculated to support an enemy whom we are seeking to bring to peace"—I might have adverted to the *uniformly* unfriendly treatment, which his majesty's ships of war and officers in his majesty's service have since the commencement of the present hostilities experienced in the American ports—and lastly, I might have adverted to the unparalleled insult, which has been recently offered at New Port, Rhode Island (not by a lawless collection of the people but) by the governour and council of that state, to the British flag, in the violent measures pursued towards his majesty's sloop of war Nautilus, and in the forcible detention of the officers by whom she was commanded. I have however forborne to expatiate upon these points, because I am not disposed to consider them, as I have before stated, as *necessary* elucidations of the *immediate* object of your letter, and much less to urge them in their present form as general topicks of recrimination. I have the honour to be, &c.

GEO. HAMMOND.

Secretary of State.

True copy,

GEORGE TAYLOR, JUN.

May 23, 1794.

Philadelphia, April 29, 1794.

SIR,—Very soon after the receipt of your letter of the 10th ult. I took more than one opportunity of mentioning to you verbally, that the government of the United States was sincere and constant in its determination to fulfil its assurances, concerning the districts occupied by the British troops, and the acts of violence said to be committed under the authority of the state of Vermont on the persons and property of British subjects, residing under the protection of your garrisons.

I indeed promised to give you an answer in writing at an earlier day than this. But being anxious to obtain particular information from a gentleman who was in town, well acquainted with the places to which you refer, and

from some accident not being able as yet to lay my hands upon the letter of Mr. Jefferson to you on the 9th of July, 1792, I was hopeful, that my personal declarations to you would continue to receive such full confidence as to afford sufficient opportunity for the most particular inquiry. But being disappointed in seeing that gentleman, I think it best to answer your letter without further delay.

I have it in charge from the President of the United States again to assure you, that his purpose to cultivate harmony with your nation, and to prevent the measures of which you complain in the above letter, continues unchanged. Orders will be therefore immediately repeated upon this head, to repress the violences which you state; and they shall be accompanied with an injunction to use against the refractors every coercion which the laws will permit. We have received no intelligence of the particular facts to which you refer. But to prevent all unnecessary circuitry in first inquiring into them, and next transmitting to this city the result, the proper instructions will be given to act, without waiting for further directions.

In these measures, sir, you will see a real disposition in us, to friendship and good neighbourhood: and I shall be justified by your own recollection, when I claim the merit of our having been uniform in the same demonstrations.

I have the honour to be, &c.

EDM. RANDOLPH.

Mr. Hammond, Minister Plenipotentiary of Great Britain.

True copy,

GEO. TAYLOR, JUN.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CONGRESS. JUNE 4, 1794.

I LAY before Congress the copy of a letter, with its enclosure, from the Secretary of State to the minister plenipotentiary of his Britannick majesty; it being an answer to a letter from the minister to him, bearing date the 22d ultimo. and already communicated.

GEO. WASHINGTON.

Philadelphia, June 2, 1794.

SIR.—If the letter with which you honoured me on the 22d ult. had not entered into a train of recrimination against the United States, I should not now trouble you with a return to its unpleasant topics. Among the reasons which would have induced me to add nothing to my letter of the 1st of the last month, it would have been of some weight, that by silence I should avoid the repetition of a style and manner, which seem to have produced a personal excitement.

As you are willing to admit the authenticity of lord Dorchester's speech, we will, with your approbation, reserve for a future discussion, on what occasion, and to what degree, an explanation may be required by the government of the United States from a foreign minister.

I selected only one passage of that speech, because in it was concentrated the real object of the whole; which was to declare an expectation that Great Britain would be at war with the United States in the course of the present year, and, if she were, to cause the warriors to draw a line. This is the undisguised sense of the governor-general, unaffected by the preliminary words which you have thought proper to quote. It is your own interpretation. For so far are you from contradicting my assertion, that Lord Dorchester fostered and encouraged in the Indians, hostile dispositions towards us, that you confine the greater part of your remaining observations to vindicate his persuasion and your own, that the principal aggression, leading to hostility, proceeded from the United States; and to suggest many others of the same tendency, upon which you would not dilate.

I shall not shrink, sir, from your charges.

1st. Notwithstanding the territory, upon which certain inhabitants of Vermont are represented in your letter of the 5th of July, 1792, to have trespassed, belongs to the United States; yet on the 9th of the same month, did my predecessor give you, as is admitted, positive assurances of the determination to discourage and repress the subject of your complaint. The necessary instructions were accordingly forwarded to that state. On examining your correspondence with my department, it does not appear, that from the 9th of July, 1792, to the 10th of March, 1794,

upwards of nineteen months, our government ever understood from yourself, or any authority of his Britannick majesty, that the original dissatisfaction continued. Nor was any discontent heard from that quarter through other channels, except what related to outrages upon our own citizens by British subjects. Then, indeed, thirty days after the hostile tribes of Indians had been assembled by Lord Dorchester, at Quebec, you renew your remonstrance. Although it cannot be by any means believed, that this was written in order to usher in the intelligence, which soon after arrived, of his speech; yet is it difficult to account for so long an interval under the circumstances supposed. Nor ought my answer, although delayed for fifty days, until the 29th of April, 1794, to be construed into an assent to any charge, since at the end of that period, having been disappointed, as my letter shows, in one opportunity of information, and no other presenting itself, we were not in a capacity of contradicting your assertions. However, sir, the instructions issued in consequence of your application, conveyed positive orders for the correction of what, upon examination, should be found irregular.

2d. Among the points, to which you intimate that you might have adverted, is enumerated the fitting out of two privateers, at Charleston, in South Carolina.—Whatever this transaction might have been, it probably occurred at the commencement of the war, and before the existence of the war was communicated to our government, by any of the powers engaged. Had such a transaction been known to the President in time, you can well judge from his actual conduct, what he would then have done. His proclamation on the 22d of April, 1793; his call upon the state governours on the 26th of the same month, to co-operate with him in the work of impartiality and peace; the system of rules which he established, and which were imparted to you, are unerring indications of the spirit of those measures, on which he had determined. He suppressed the consular courts, which attempted to pass sentences of condemnation on captures;—he restored several vessels to British owners;—prosecutions have been instituted against the violators of neutrality. In a word, sir, what has been required, under the sanction of the law of nations, which has not been fulfilled? How many things

have been spontaneously done, to evince our impartiality? Let me request you to review my predecessor's letters to you of April 22, May 15, June 5, August 7, 8, 25, September 5 and 12, 1793; and to say if more could be well expected from us? After such demonstrations, it might have been hoped, that the equipment of these two privateers would not rise again in the shape of a charge. But the letter of the 5th of June being conceived of itself to be satisfactory, is here inserted.

“In the letter which I had the honour of writing you on the 15th May, in answer to your several memorials of the 3th of that month, I mentioned that the President, reserved for further consideration, a part of the one which related to the equipment of two privateers in the port of Charleston. The part alluded to, was that wherein you express your confidence that the executive government of the United States would pursue measures for repressing such practices in future, and for restoring to their rightful owners any captures which such privateers might bring into the ports of the United States.

“The President, after a full investigation of this subject, and the most mature consideration, has charged me to communicate to you, that the first part of this application is found to be just, and that effectual measures are taken for preventing repetitions of the act therein complained of; but that the latter part, desiring restitution of the prizes, is understood to be inconsistent with the rules which govern such cases, and would, therefore, be unjustifiable towards the other party.

“The principal agents in this transaction were French citizens. Being within the United States, at the moment a war broke out between their own and another country, they determine to go in its defence; they purchase, arm, and equip a vessel, with their own money, man it themselves, receive a regular commission from their nation, depart out of the United States, and then commence hostilities by capturing a vessel. If, under these circumstances, the commission of the captors was valid, the property, according to the laws of war, was, by the capture, transferred to them;—and it would be an aggression on their nation, for the United States to rescue it from them, whether on the high seas, or on coming into their ports. If the commission was not valid, and consequently the

property not transferred by the laws of war to the captors, then the case would have been cognizable in our courts of admiralty, and the owners might have gone thither for redress. So that on neither supposition would the Executive be justifiable in interposing.

“With respect to the United States, the transaction can in no wise be imputed to them. It was in the first moment of the war,—in one of their most distant ports,—before measures could be provided by the government to meet all the cases, which such a state of things was to produce,—impossible to have been known, and therefore impossible to have been prevented by that government.

“The moment it was known, the most energetick orders were sent to every state and port in the Union to prevent a repetition of the accident. On a suggestion, that citizens of the United States had taken part in the act, one who was designated, was instantly committed to prison for prosecution; one or two others have been since named, and committed in like manner; and should it appear, that there were still others, no measures will be spared to bring them to justice. The President has even gone farther: He has required, as a reparation of their breach of respect to the United States, that the vessels so armed and equipped shall depart from our ports.

“You will see, sir, in these proceedings of the President, unequivocal proofs of the line of strict right, which he means to pursue. The measures now mentioned are taken in justice to the one party; the ulterior measure of seizing and restoring the prizes, is declined in justice to the other; and the evil, thus early arrested, will be of very limited effects; perhaps, indeed, soon disappear altogether.”

As to the permission from the governour of South Carolina, for the departure of those privateers from port, you may assure yourself of a proper inquiry; and I take the liberty of requesting any evidence which you may have of it.

3d. With so many direct proofs in your hands of the opinion constantly maintained by our government against the legality of captures in general, made by illegal privateers, it is not easily explained, why the validity of those *before* the 5th of June, 1793, should be argued from a refusal to restore them. The above recited letter of that date nei-

ther affirms nor disaffirms their validity ; but declines the granting of restitution, as being inconsistent with the rules which govern in such cases. These rules are, That if the commission be good, the capture is good ; if the commission be bad, the capture is bad ; but whether it be good or bad, is not decided ; it being enough to prove, that the transaction, for the reasons assigned, can in no wise be imputed to the United States. But if captures of this kind, prior to the 5th of June, 1793, do really amount (as is conceived by some) to no very considerable value, this would, of itself, lessen the importance of the insinuation.

4th. The Secretary of War has undertaken to ascertain the precise state of the privateers le Petit Democrate and le Carmagnole, and the result will be communicated to you. In the mean time, it is a matter of some surprise, that vessels, whose single employment and profit must consist in cruising on the ocean, should have remained in the port of New York during the whole winter, and probably up to the date of your letter (May 22d, 1794.) May it not be presumed that their activity has been checked by the intervention of the government ? But, sir, if they have not been dismantled, your letter brings the first notice of the omission.

5th. It is true, that the sale of prizes made by French cruisers has not been prohibited in the United States, and that our treaty with France has been so interpreted, as not to contemplate a freedom to sell. The next resort was to the law of nations ; which was scrupulously searched by the Executive, with the pure desire of discovering truth and justice to all. Upon this, as on many other occasions, the civilians differ ; Vattel declaring, that a privateer may carry his prize into a neutral port, and there freely sell it ; Martens affirming the same doctrine, if it has not been otherwise regulated by treaty ; and others opposing it. In this schism among the writers, it was resolved by the President of the United States to impose no restraint upon those sales ; and to refer them as affairs of legislation to Congress, at the earliest moment of their session. Thus much has been observed, not as my final answer, but merely to introduce an assurance, that I will follow you in the main discussion, whensoever you shall bring it forward in detail.

6th. Undoubtedly, sir, you have been misinformed, that the vessels of France have been permitted to depart from

our ports, notwithstanding the embargo. As the history of the executive proceedings is neither long nor entangled, it shall be frankly stated to you. As soon as the embargo was laid, expresses and advice boats were despatched to notify the officers of the customs and revenue cutters, and all others concerned in its execution. The resolution imposing it involved all foreign nations; the instructions from the President of the United States favoured no nation, directly or indirectly. A French snow, *La Camille*, which had descended the river Delaware as low as New Castle on her voyage, was stopped by an officer of the United States; and the President, adhering to perfect impartiality, could not think himself justified to gratify the minister of the French Republick with a passport. Passports being kept under the special view of the President were issued only after his examination of each case, and the total number of them does not exceed twenty-six. Among them was one to yourself; one to an agent, who was sent to the West Indies, upon a business connected with the late captures and condemnations in various British courts of admiralty; one to a citizen, whose vessel was under trial in Bermuda, and who was anxious to forward the British instructions of the 8th of January, 1794, with a hope of rescuing her from confiscation; one to the friends of Joshua Barney, then in Jamaica; twenty for the accommodation of several unfortunate inhabitants of St. Domingo, to some of whom our government was advancing money for their support, and who could no longer endure their separation from home; one to some other persons in peculiar circumstances, desirous of returning to the West Indies; and in the last instance, one to the minister of the French Republick. If, therefore, by any other passport or permission the embargo has been relaxed, it was unauthorized by the President, and unlawful. The distance of Hampton Road from this city, being more than three hundred miles, the officers of government, resident *here*, could not learn at the moment what was passing *there*. No intelligence of an official nature, or of any real importance, no complaint from any other foreign minister, or any other person, has since reached us. If, sir, you should happen to possess the information, I ask it as a favour of you to designate who granted the permission, and under what circumstances the French vessels left that road? An

investigation, however, has been and shall be pursued, on our part, without delay. If the law has been violated, it shall be vindicated ; but a violation of law is very remote from a *permission* of the government.

7th. The uniformly unfriendly treatment, which the British officers are said to have experienced in the United States, cannot be answered, until it shall be more explicitly defined. Did this treatment break forth in words or actions, not cognizable by law ? If so, no complaint can be offered to government. Or in words or actions, which were so cognizable ? Our courts are free to foreigners against citizens, and independent of influence. To yourself let me appeal, that on the representations, which you thought proper to lay before the President, in relation to the British Consul at Baltimore, the British Consul at Norfolk, and the commander of the *Dædalus* frigate, the necessary measures were promptly adopted ; the result has been transmitted to you, and no objection has been returned. Nor was the government backward in its interference in the late affair of Philadelphia. And these being the only occurrences of the kind within my knowledge, I trust, that no example can be produced of government refusing to extend its protection on every seasonable occasion.

8th. The events at Newport, in Rhode Island, are accurately detailed in the proceedings, which I have the honour of enclosing to you. Within the limits of the present letter, I cannot do more ; as it might be an useless task to detain you with my remarks, when none of them might be adapted to the animadversions which you meditate. It is enough, therefore, for me to engage, that these animadversions, whenever they shall appear, shall receive particular attention.

Although, sir, your charges against the United States are sketched only, the impression, which may have been intended, cannot be counteracted too soon by such general elucidations, as at a future day may be more minutely unfolded. But let these facts be as they will, are they indicative of a hostile disposition in the United States, and ought they ultimately to produce a state of war ? This is not the place for us to retort our complaints. But compare them with the whole of your catalogue ; and say, what may our feelings be ? Yet we prefer peace.

9th. As lord Dorchester's endeavour to stir up the Indians against us is without justification, so is the expedition of governour Simcoe without pretext.

That you have received no intelligence of such an event having *actually occurred*, leaves room to conjecture, that you may not be without intelligence of it having been designed; and that it has therefore probably taken place. But you insist, that much will depend on the place intended for the fort. Let the point allotted for it on the Miami be unknown; the place is, for our immediate purpose, adequately marked out by being on that river. A single glance of the eye over the map proves that its source is within the limits of the United States. In its whole length it is flanked on each side by our territory. Its very mouth is to the southward of our line, as recognised by our treaty with his Britannick majesty. On no part therefore of the rapids can a fort be built, but within our country.

This being fixed, your argument is, that if the fort be for the purpose of protecting subjects of his majesty, residing in districts, dependant on the fort of Detroit, or of preventing that fortress from being straitened by the approach of the American army, the principle of statu quo, until the final arrangement of the point in discussion between the two countries shall be concluded, will strictly apply.

To change by hostile movements the condition of a thing, concerning which a treaty is opened, not being consonant with a spirit of adjustment, the principle of statu quo has been generally adopted. The nearest point of the Rapids to Detroit cannot be less than fifty miles. They have never been considered—they never could be considered, as appendages to Detroit. But you proceed and say, that the proposed assumption of territory may depend on districts, which depend on Detroit. It is too obvious to dwell upon the remark, that if Detroit, which lies within the United States, becomes the first station from which a district still farther in, may arise, and that from this district another district may be generated, one encroachment may beget another ad infinitum. It will, however, be very acceptable to understand with accuracy, how much of our territory towards the Miami was actually possessed by the military establishment of Detroit at the

time of the peace. I mention the military establishment, because if any subjects of his Britannick majesty reside beyond the line of actual possession, they are, as being within our limits, under our jurisdiction.

To prevent the fortress of Detroit from being straitened by the approach of the American army, is either a new modification of the preceding idea, or founded upon an untenable suspicion. For the question must recur, are the rapids an appendage to Detroit? Were they connected with it at the peace? If convenience only were to be consulted, and a wide range of unsettled territory, by being suitable to the momentary circumstances of one nation, is to be transferred for that reason alone from another, which is the true proprietor, we might even then controvert the conveniency of the rapids to Detroit. If right be consulted, our right is complete. Is then our territory to be thus seized? Nay more, sir, I am authorized to say to you explicitly, that the American army has no instructions to straiten or annoy that post; and that if the descent on the rapids was dictated by this consideration, it ought to be discontinued, as being without cause.

I have the honour to be, &c.

EDM. RANDOLPH.

Mr. Hammond, Minister Plenipotentiary
of his Britannick Majesty.

True copy,

GEO. TAYLOR, JUN.

Providence, May 16, 1794.

SIR,—Agreeably to the request of the general assembly, I enclose you a report of the justices of the superior court of this state, and of the district judge of Rhode Island, respecting certain Americans detained on board a British sloop of war.

The moderation which accompanied the determined resolution of the legislature in the progress of this business, with the accomplishment of the release of our fellow citizens, gave universal satisfaction.

I also enclose an account of the supplies granted the Nautilus, that it may be known they were limited to the

necessary supplies for carrying her to her destined port, and perfectly agreeable to our treaty with France.

I am, sir, &c.

A. FENNER.

EDMUND RANDOLPH, Esq. Secretary of State.

STATE OF RHODE ISLAND, &c.

In General Assembly, May Session, A. D. 1794.

THE following report was made to this assembly, to wit:

A statement of facts in the case of the six American sailors, illegally detained on board his Britannick majesty's sloop of war, the Nautilus, H. W. Baynton, commander.

On the 8th day of May, A. D. 1794, the said ship arrived in the harbour or port of Newport in the state of Rhode Island and Providence Plantations, on the same day the commander of said ship made application to the general assembly of said state, then in session, at said Newport, for liberty to purchase supplies of provisions for the people on board of her: The general assembly immediately took the application into consideration, but during the progress of that business, they were informed that there were thirteen American citizens detained on board said ship against their consent, three of which had been pressed in the West Indies; and that great anxiety was occasioned thereby in the minds of the people. The general assembly immediately proceeded to measures for investigating the facts, sent a message to captain Baynton, then on shore, requesting his attendance before them: The captain immediately attended, with his lieutenant. The assembly also requested all the judges of the superior court, being then present, together with the judge of the district court, to confer with said officers on the subject, to inform them of the information they had received, of the uneasiness it occasioned, and of their expectation that if there were any American citizens on board their ship, they might be immediately released; and if not released to advise the general assembly of the measures which might be legally pursued to obtain the discharge of the Americans so detained. The judges accordingly met the

said officers in the council chamber, where the said officers, with the British vice consul, Mr. Moore, who attended them, were waiting, upon the request of the general assembly. The judges informed them of the information which had been received, and expressed their wish that they would afford the fullest satisfaction of the facts. The captain declared there were none on board of that description, at least within his knowledge, and so declared the lieutenant; that he did not choose to take such seamen on board, that he had never pressed such, and requested their names: the judges told him they were not able to give their names, he appeared altogether to doubt the fact, hereupon, John Carr, gunner of the fort, was called upon, who on solemn oath declared, that he inquired of one of the ship's barge men, if there were any Americans on board of said ship, who answered that there were thirteen, ten of which had voluntarily entered on board, and that the three others had been pressed. The captain still appeared to disbelieve the matter; it was then proposed to him, that, to satisfy himself and the authority, he would permit a gentleman or two, with himself or lieutenant to go on board, and there to make the necessary inquiry. That if there should be American citizens on board, it was presumed he would not hesitate to discharge them, if there were none, the publick mind would be at ease, and mutual confidence would be restored. He agreed to the propriety of dismissing such, if on board, and at first agreed to the proposal; but on something being dropped by the consul, viz. the ship to be searched; he withdrew his assent, and declared he would by no means consent to the proposition. Much argument was used to convince him of the propriety of it, or that he ought to point out some way to come at the truth, but to no purpose; he thought his word sufficient, it was observed to him, that it was not presumed he would undertake positively to deny the fact, since the information came from his own people, and it was not probable he could be certain of the fact; he said he would not say positively, but he was very confident there were none such, and that the information was groundless: it was observed to him, he must be sensible that that kind of argument would give no satisfaction, it was wished to conduct towards him with the utmost candour, and that he would exhibit the same; it was highly

reasonable that the authority should be satisfied : it was presumed that the British government would, under a like occasion, show the same solicitude for the relief of their subjects, and were possessed of sufficient spirit to obtain entire satisfaction. That he must expect it would be exerted here, if we were reduced to the necessity ; but it was still wished he would obviate that necessity by a ready compliance with the proposition, or by proposing something equally satisfactory ; he replied he could do nothing further, was surprised at being thus called upon this business, asked if he was a prisoner, and appeared to be going out of the room ; it was said he was not a prisoner, no measure of that kind had been taken. It was proposed that the judges would leave the room to the officers with the consul, that as much had been said, they might further deliberate on the matter, and consult what might conduce most to a fair and just settlement of the business ; this was refused, and the captain and his lieutenant both, against the advice of the judges, burst out of the room, but instantly returned, declaring they were stopped by the people in the lobby, who were there in great numbers, and they were under apprehensions of danger. The lieutenant said he was kicked, it was asked him with earnestness, “ was you kicked,” he said “ no, but what was next to it, he was jam’d up ;” they were desired to be composed and to sit down, that it was wished they had taken advice, for while with the judges they should be protected ; the captain again declared he could not comply with the proposal made, or give further satisfaction than he had, as to the Americans said to be on board his ship. Information was then given to the general assembly of the proceeding thus far, when they passed the following resolution.

Lower House of Assembly, May 8, 1794.

WHEREAS complaint hath been made to this assembly, that sundry citizens of the United States are illegally detained on board of a certain sloop of war, called the *Nautilus*, belonging unto his Britannick majesty, commanded by H. W. Baynton, now riding at anchor in the road of Newport, within this state. It is hereby voted and resolved, that the said captain H. W. Baynton, and the lieutenant of said sloop of war, who are now on shore, remain there

until investigation of the subject of said complaint be had before the judicial authority of this state and district.

To effect which purpose, it is further voted and resolved, That on condition the said H. W. Baynton consent thereto, messieurs Henry Sherburne, John L. Boss, Samuel Wardwell, Christopher Ellery, and William Davis be a committee from this assembly, to go on board the said sloop of war, with Mr. Thomas W. Moore, vice consul of his Britannick majesty, for the district of Rhode Island, and request of the commanding officer, now on board said sloop of war, an examination of the crew thereof, and report to the judicial authority of this state and district, the names of any citizens of the said United States there detained as aforesaid: And that said judicial authority take examination of the birth and residence of such citizens, and enlarge those who, on such examination, are found to be citizens of any of the said United States.

Voted. &c.

SAMUEL EDDY. Clk.

In the Upper House.

Read the same day and concurred.

By order,

HENRY WARD, Sec'ry.

The officers were informed of this resolution, and a conversation more cool and candid soon after took place; and the captain agreed that the gentlemen mentioned in the foregoing act of the general assembly might go on board his ship; the consul agreed to go with them, and the captain sent a letter (which he first showed to the judges) to the commanding officer on board, directing him to give those gentlemen all the satisfaction in his power, as to there being any Americans on board. Those gentlemen proceeded on board, were received with the utmost politeness; the books and lists of men were shown, the people called upon to declare whether there were then any Americans unwilling to remain on board; six appeared, as by the following copy, taken by the committee, from the shipping book itself, and by their own declaration, to be Americans.

John McCarthy, Martha's Vineyard, entry June 27, 1793.

John Johnson, Charleston, South Carolina, entry *December 17, 1793.*

Nicholas Martin, Boston, entry *February 16, 1794.*

Anthony Dwyer, George Town, South Carolina, entry *June 14, 1793.*

Samuel Brown, Portsmouth, Virginia, entry *December 2, 1793.*

William Denning, New City, New York, entry *April, 1794.*

N. B. The entries appeared to be made by some officer of the ship, and no signature of the sailors.

The above is a true copy of the extract, from the books of the sloop Nautilus, belonging to his Britannick majesty, now riding in the harbour of Newport, by the subscribers, who were appointed by the honourable general assembly of the state of Rhode Island and Providence Plantations, a committee, for the purpose of determining the number of Americans on board of said sloop, and which was reported on the eighth day of May, in the year of our Lord one thousand seven hundred and ninety-four, to the said honourable body, by

Henry Sherburne,
John L. Boss,
Samuel Wardwell,
Christopher Ellery,
William Davis.

The captain immediately declared that he was surprised; that four of them he now believed were Americans, but he was however willing the six should be brought on shore; and as many as were Americans he would immediately discharge. His barge went again on board with his written orders, as follows:

Dear Mr. Innerheny,

SEND the six men on shore to be examined immediately.

Yours, &c.

H. W. BAYNTON.

John McCarthy,	Anthony Dwyer,
John Johnson,	Samuel Brown,
Nicholas Martin,	Wm. Denning.

Mr. Thomas to come on shore to take care of the boat; and not leave her.

The six sailors were soon brought on shore ; the officers were convinced that they were all Americans, and the captain agreed that they might go where they pleased ; and that in the morning he would send their clothing on shore, give them written discharges, and certificates for their wages ; and the consul freely offered to take them, and give the sailors the money for them : Whereupon entire good humour appeared fully restored, and the officers, with the consul, retired. In the morning the captain sent an officer on shore, who fully completed the business, agreeably to the captain's agreement.

The certificates were in the following form :

These are to certify the honourable the principal officers and commissioners of his majesty's navy, that Samuel Brown served as able seaman on board his majesty's sloop Nautilus, under my command, from the 2d day of December, 1793, to the date hereof, when he was discharged, he being a subject of the United States of America ; and that there is charged against him, in the ship's books, the sum of two pounds eighteen shillings and eight pence :

Navy slops	l. 1	19	10
Beds	0	12	6
Tobacco	0	6	4
	<hr/>		
	l. 2	18	8

Wages due, l. 3 2 8.

Given under my hand, on board the said sloop at Newport, Rhode Island, the 9th day of May, 1794.

H. W. BAYNTON.

The whole amount of the wages due to the sailors, as adjusted by the captain, and agreed to by the sailors was 29l. 9s. 1d. sterling.

The foregoing statement, made by the request of the general assembly, is humbly submitted by the judges of the superior court, and the judge of the district court.

Newport, May 10, 1794.

Henry Marchant, judge of the district court in and for Rhode Island district.

Daniel Owen, C. J. S. Court.

William Taggart, } Judges of Superior Court.
 Walter Cook, }
 Joshua Bicknall,
 Thomas Tillinghast.

On due consideration whereof,

It is voted and resolved, that the foregoing report be, and the same is hereby accepted. And that his excellency the governour be requested to transmit a copy thereof to the Secretary of State of the United States, as soon as may be.

A true copy.

Witness,

HENRY WARD, Secretary.

State of Rhode Island, &c. In General Assembly, May Session, A. D. 1794.

UPON the application of H. W. Baynton, commander of the British sloop of war the Nautilus, for permission to purchase the necessary supplies to enable him to proceed to the port to which he is bound.

It is voted and resolved, That his excellency the governour cause the said ship to be supplied with four or five thousand pounds of bread, five hundred and sixty pounds of fresh beef and veal, and one hundred and fifty pair of shoes, with such precautions, and under such directions, as he shall think proper.

A true copy.

Witness,

HENRY WARD, Secretary.

Department of State, June 3, 1794.

I hereby certify, that the foregoing is a true copy of the original communication from governour Fenner to the Secretary of State.

GEO. TAYLOR, JUN.

SPEECH

OF THE PRESIDENT OF THE UNITED STATES TO BOTH
HOUSES OF CONGRESS. NOV. 19, 1794.

Fellow citizens of the Senate,
and of the House of Representatives,

WHEN we call to mind the gracious indulgence of heaven, by which the American people became a nation; when we survey the general prosperity of our country, and look forward to the riches, power, and happiness, to which it seems destined; with the deepest regret do I announce to you, that during your recess, some of the citizens of the United States have been found capable of an insurrection. It is due, however, to the character of our government, and to its stability, which cannot be shaken by the enemies of order, freely to unfold the course of this event.

During the session of the year 1790, it was expedient to exercise the legislative power, granted by the constitution of the United States, "to lay and collect excises." In a majority of the states, scarcely an objection was heard to this mode of taxation. In some, indeed, alarms were at first conceived, until they were banished by reason and patriotism. In the four western counties of Pennsylvania, a prejudice, fostered and embittered by the artifice of men, who laboured for an ascendancy over the will of others, by the guidance of their passions, produced symptoms of riot and violence. It is well known, that Congress did not hesitate to examine the complaints which were presented, and to relieve them, as far as justice dictated, or general convenience would permit. But the impression, which this moderation made on the discontented, did not correspond with what it deserved; the arts of delusion were no longer confined to the efforts of designing individuals.

The very forbearance to press prosecutions was misinterpreted into a fear of urging the execution of the laws; and associations of men began to denounce threats against the officers employed. From a belief, that by a more formal concert, their operation might be defeated, certain self-created societies assumed the tone of condemnation.

Hence, while the greater part of Pennsylvania itself were conforming themselves to the acts of excise, a few counties were resolved to frustrate them. It was now perceived that every expectation from the tenderness which had been hitherto pursued, was unavailing, and that further delay could only create an opinion of impotency or irresolution in the government. Legal process was, therefore, delivered to the marshal, against the rioters and delinquent distillers.

No sooner was he understood to be engaged in this duty, than the vengeance of armed men was aimed at *his* person, and the person and property of the inspector of the revenue. They fired upon the marshal, arrested him, and detained him for some time, as a prisoner. He was obliged, by the jeopardy of his life, to renounce the service of other process, on the west side of the Allegheny mountain; and a deputation was afterwards sent to him to demand a surrender of that which he *had* served. A numerous body repeatedly attacked the house of the inspector, seized his papers of office, and finally destroyed by fire, his buildings, and whatsoever they contained. Both of these officers, from a just regard to their safety, fled to the seat of government; it being avowed, that the motives to such outrages were to compel the resignation of the inspector; to withstand by force of arms the authority of the United States, and thereby to extort a repeal of the laws of excise, and an alteration in the conduct of government.

Upon the testimony of these facts, an associate justice of the supreme court of the United States notified to me, that "in the counties of Washington and Allegheny, in Pennsylvania, laws of the United States were opposed, and the execution thereof obstructed by combinations, too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal of that district." On this call, momentous in the extreme, I sought and weighed what might best subdue the crisis. On the one hand, the judiciary was pronounced to be stripped of its capacity to enforce the laws: crimes, which reached the very existence of social order, were perpetrated without control; the friends of government were insulted, abused, and overawed into silence, or an apparent acquiescence; and to yield to the treasonable fury of so

small a portion of the United States, would be to violate the fundamental principle of our constitution, which enjoins that the will of the majority shall prevail. On the other, to array citizen against citizen—to publish the dishonour of such excesses—to encounter the expense, and other embarrassments of so distant an expedition, were steps too delicate, too closely interwoven with many affecting considerations, to be lightly adopted. I postponed, therefore, the summoning of the militia immediately into the field; but I required them to be held in readiness, that if my anxious endeavours to reclaim the deluded, and to convince the malignant of their danger, should be fruitless, military force might be prepared to act, before the season should be too far advanced.

My proclamation of the 7th of August last was accordingly issued, and accompanied by the appointment of commissioners, who are charged to repair to the scene of insurrection. They were authorized to confer with any bodies of men, or individuals. They were instructed to be candid and explicit, in stating the sensations which had been excited in the Executive, and his earnest wish to avoid a resort to coercion; to represent, however, that without submission, coercion *must* be the resort; but to invite them, at the same time, to return to the demeanour of faithful citizens, by such accommodations as lay within the sphere of executive power. Pardon, too, was tendered to them by the government of the United States, and that of Pennsylvania, upon no other condition, than a satisfactory assurance of obedience to the laws.

Although the report of the commissioners marks their firmness and abilities, and must unite all virtuous men, by showing that the means of conciliation have been exhausted, all of those who had committed or abetted the tumults did not subscribe the mild form, which was proposed as the atonement; and the indications of a peaceable temper were neither sufficiently general nor conclusive, to recommend or warrant the further suspension of the march of the militia.

Thus the painful alternative could not be discarded. I ordered the militia to march, after once more admonishing the insurgents, in my proclamation of the 25th of September last.

It was a task too difficult to ascertain with precision, the lowest degree of force competent to the quelling of the insurrection. From a respect, indeed, to economy and the ease of my fellow-citizens belonging to the militia, it would have gratified me to accomplish such an estimate. My very reluctance to ascribe too much importance to the opposition, had its extent been accurately seen, would have been a decided inducement to the smallest efficient numbers. In this uncertainty, therefore, I put into motion fifteen thousand men, as being an army, which, according to all human calculation, would be prompt, and adequate in every view, and might perhaps, by rendering resistance desperate, prevent the effusion of blood. Quotas had been assigned to the states of New Jersey, Pennsylvania, Maryland and Virginia; the governor of Pennsylvania having declared on this occasion, an opinion which justified a requisition to the other states.

As commander in chief of the militia, when called into the actual service of the United States, I have visited the places of general rendezvous, to obtain more exact information, and to direct a plan for ulterior movements. Had there been room for a persuasion that the laws were secure from obstruction; that the civil magistrate was able to bring to justice such of the most culpable as have not embraced the proffered terms of amnesty, and may be deemed fit objects of example; that the friends to peace and good government were not in need of that aid and countenance, which they ought always to receive, and I trust ever will receive, against the vicious and turbulent, I should have caught with avidity the opportunity of restoring the militia to their families and home. But succeeding intelligence has tended to manifest the necessity of what has been done; it being now confessed by those who were not inclined to exaggerate the ill conduct of the insurgents, that their malevolence was not pointed merely to a particular law; but that a spirit inimical to all order, has actuated many of the offenders. If the state of things had afforded reason for the continuance of my presence with the army, it would not have been withholden. But every appearance assuring such an issue, as will redound to the reputation and strength of the United States, I have judged it most proper to resume my duties at the seat of

government, leaving the chief command with the governor of Virginia.

Still, however, as it is probable, that in a commotion like the present, whatsoever may be the pretence, the purposes of mischief and revenge may not be laid aside, the stationing of a small force for a certain period in the four western counties of Pennsylvania will be indispensable, whether we contemplate the situation of those who are connected with the execution of the laws, or of others who may have exposed themselves by an honourable attachment to them.

Thirty days from the commencement of this session, being the legal limitation of the employment of the militia, Congress cannot be too early occupied with this subject.

Among the discussions which may arise from this aspect of our affairs, and from the documents which will be submitted to Congress, it will not escape their observation, that not only the inspector of the revenue, but other officers of the United States in Pennsylvania, have, from their fidelity in the discharge of their functions, sustained material injuries to their property. The obligation and policy of indemnifying them are strong and obvious. It may also merit attention, whether policy will not enlarge this provision to the retribution of other citizens, who, though not under the ties of office, may have suffered damage by their generous exertions for upholding the constitution and the laws. The amount, even if all the injured were included, would not be great; and on future emergencies, the government would be amply repaid by the influence of an example, that he who incurs a loss in its defence, shall find a recompense in its liberality.

While there is cause to lament, that occurrences of this nature should have disgraced the name, or interrupted the tranquillity of any part of our community, or should have diverted to a new application, any portion of the publick resources, there are not wanting real and substantial consolations for the misfortune. It has demonstrated, that our prosperity rests on solid foundations, by furnishing an additional proof, that my fellow-citizens understand the true principles of government and liberty; that they feel their inseparable union; that, notwithstanding all the devices which have been used to sway them from their interest and duty, they are now as ready to maintain the

authority of the laws against licentious invasions, as they were to defend their rights against usurpation. It has been a spectacle, displaying to the highest advantage, the value of republican government, to behold the most and the least wealthy of our citizens standing in the same ranks as private soldiers,—pre-eminently distinguished by being the army of the constitution, undeterred by a march of three hundred miles over rugged mountains, by the approach of an inclement season, or by any other discouragement. Nor ought I to omit to acknowledge the efficacious and patriotick co-operation, which I have experienced from the chief magistrates of the states to which my requisitions have been addressed.

To every description, indeed, of citizens let praise be given; but let them persevere in their affectionate vigilance over that precious depository of American happiness, the Constitution of the United States. Let them cherish it too, for the sake of those, who from every clime are daily seeking a dwelling in our land. And when in the calm moments of reflection, they shall have retraced the origin and progress of the insurrection, let them determine whether it has not been fomented by combinations of men, who, careless of consequences, and disregarding the unerring truth, that those who rouse, cannot always appease a civil convulsion, have disseminated, from an ignorance or perversion of facts, suspicions, jealousies, and accusations of the whole government.

Having thus fulfilled the engagement, which I took, when I entered into office, “to the best of my ability to preserve, protect and defend the Constitution of the United States,” on you, gentlemen, and the people by whom you are deputed, I rely for support.

In the arrangements to which the possibility of a similar contingency will naturally draw your attention, it ought not to be forgotten, that the militia laws have exhibited such striking defects, as could not have been supplied but by the zeal of our citizens. Besides the extraordinary expense and waste, which are not the least of the defects, every appeal to those laws is attended with a doubt on its success.

The devising and establishing of a well regulated militia, would be a genuine source of legislative honour, and a perfect title to publick gratitude. I, therefore, entertain

a hope, that the present session will not pass, without carrying to its full energy the power of organizing, arming, and disciplining the militia; and thus providing, in the language of the constitution, for calling them forth to execute the laws of the Union, suppress insurrections, and repel invasions.

As auxiliary to the state of our defence, to which Congress can never too frequently recur, they will not omit to inquire, whether the fortifications, which have been already licensed by law, be commensurate with our exigencies.

The intelligence from the army under the command of General Wayne, is a happy presage to our military operations against the hostile Indians north of the Ohio. From the advices which have been forwarded, the advance which he has made must have damped the ardour of the savages, and weakened their obstinacy in waging war against the United States. And yet, even at this late hour, when our power to punish them cannot be questioned, we shall not be unwilling to cement a lasting peace, upon terms of candour, equity, and good neighbourhood.

Towards none of the Indian tribes have overtures of friendship been spared. The Creeks in particular, are covered from encroachment by the interposition of the general government and that of Georgia. From a desire also to remove the discontents of the Six Nations, a settlement, meditated at Presqu'-isle, on Lake Erie, has been suspended; and an agent is now endeavouring to rectify any misconception, into which they may have fallen. But I cannot refrain from again pressing upon your deliberations, the plan which I recommended at the last session, for the improvement of harmony with all the Indians within our limits, by the fixing and conducting of trading houses, upon the principles then expressed.

Gentlemen of the House of Representatives,—The time which has elapsed since the commencement of our fiscal measures, has developed our pecuniary resources, so as to open a way for a definitive plan for the redemption of the publick debt. It is believed, that the result is such as to encourage Congress to consummate this work without delay. Nothing can more promote the permanent welfare of the nation, and nothing would be more grateful to our con-

stituents. Indeed whatsoever is unfinished of our system of publick credit, cannot be benefited by procrastination ; and as far as may be practicable, we ought to place that credit on grounds which cannot be disturbed, and to prevent that progressive accumulation of debt which must ultimately endanger all governments.

An estimate of the necessary appropriations, including the expenditures into which we have been driven by the insurrection, will be submitted to Congress.

Gentlemen of the Senate, and of the House of Representatives,—The mint of the United States has entered upon the coinage of the precious metals, and considerable sums of defective coins and bullion have been lodged with the director by individuals. There is a pleasing prospect that the institution will, at no remote day, realize the expectation which was originally formed of its utility.

In subsequent communications, certain circumstances of our intercourse with foreign nations will be transmitted to Congress. However, it may not be unseasonable to announce that my policy in our foreign transactions has been, to cultivate peace with all the world ; to observe treaties with pure and absolute faith ; to check every deviation from the line of impartiality ; to explain what may have been misapprehended, and correct what may have been injurious to any nation ; and having thus acquired the right, to lose no time in acquiring the ability, to insist upon justice being done to ourselves.

Let us unite, therefore, in imploring the Supreme Ruler of nations to spread his holy protection over these United States ; to turn the machinations of the wicked to the confirming of our constitution ; to enable us at all times to root out internal sedition, and put invasion to flight ; to perpetuate to our country that prosperity, which his goodness has already conferred, and to verify the anticipations of this government being a safeguard to human rights.

G. WASHINGTON.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO
FOREIGN INTERCOURSE. FEB. 28, 1795.

[See Vol. Confidential Documents.]

SPEECH

OF THE PRESIDENT OF THE UNITED STATES TO BOTH
HOUSES OF CONGRESS. DEC. 8, 1795.

Fellow citizens of the Senate,
and House of Representatives,

I TRUST I do not deceive myself, while I indulge the persuasion that I have never met you at any period, when, more than at the present, the situation of our publick affairs has afforded just cause for mutual congratulation, and for inviting you to join with me in profound gratitude to the Author of all good, for the numerous and extraordinary blessings we enjoy.

The termination of the long, expensive and distressing war, in which we have been engaged with certain Indians northwest of the Ohio, is placed in the option of the United States, by a treaty which the commander of our army has concluded provisionally, with the hostile tribes in that region.

In the adjustment of the terms, the satisfaction of the Indians was deemed an object worthy no less of the policy, than of the liberality of the United States, as the necessary basis of durable tranquillity. The object, it is believed, has been fully attained. The articles agreed upon, will immediately be laid before the Senate, for their consideration.

The Creek and Cherokee Indians, who alone of the southern tribes had annoyed our frontiers, have lately confirmed their pre-existing treaties with us; and were giving evidence of a sincere disposition to carry them into effect, by the surrender of the prisoners and property they had taken. But we have to lament, that the fair prospect

in this quarter, has been once more clouded by wanton murders, which some citizens of Georgia are represented to have recently perpetrated on hunting parties of the Creeks; which have again subjected that frontier to disquietude and danger; which will be productive of further expense, and may occasion more effusion of blood. Measures are pursuing to prevent or mitigate the usual consequences of such outrages; and with the hope of their succeeding, at least to avert general hostility.

A letter from the emperor of Morocco, announces to me his recognition of our treaty, made with his father the late emperor; and consequently, the continuance of peace with that power. With peculiar satisfaction I add, that information has been received from an agent deputed on our part to Algiers, importing that the terms of the treaty with the dey and regency of that country, had been adjusted in such a manner, as to authorize the expectation of a speedy peace, and the restoration of our unfortunate fellow citizens, from a grievous captivity.

The latest advices from our envoy at the court of Madrid, give, moreover, the pleasing information, that he had received assurances of a speedy and satisfactory conclusion of his negotiation. While the event, depending upon unadjusted particulars, cannot be regarded as ascertained, it is agreeable to cherish the expectation of an issue which, securing amicably very essential interests of the United States, will at the same time, lay the foundation of lasting harmony with a power, whose friendship we have uniformly and sincerely desired to cultivate.

Though not before officially disclosed to the House of Representatives, you, gentlemen, are all apprized, that a treaty of amity, commerce and navigation, has been negotiated with Great Britain; and that the Senate have advised and consented to its ratification, upon a condition which excepts part of one article. Agreeably thereto, and to the best judgment I was able to form of the publick interest, after full and mature deliberation, I have added my sanction. The result on the part of his Britannick majesty is unknown. When received, the subject will, without delay, be placed before Congress.

This interesting summary of our affairs, with regard to the foreign powers, between whom and the United States controversies have subsisted; and with regard also to those

of our Indian neighbours with whom we have been in a state of enmity or misunderstanding, opens a wide field for consoling and gratifying reflections. If by prudence and moderation on every side, the extinguishment of all the causes of external discord, which have heretofore menaced our tranquillity, on terms compatible with our national rights and honour, shall be the happy result, how firm and how precious a foundation will have been laid for accelerating, maturing and establishing the prosperity of our country !

Contemplating the internal situation, as well as the external relations of the United States, we discover equal cause for contentment and satisfaction. While many of the nations of Europe, with their American dependencies, have been involved in a contest unusually bloody, exhausting and calamitous ; in which the evils of foreign war have been aggravated by domestick convulsion and insurrection ; in which many of the arts most useful to society have been exposed to discouragement and decay ; in which scarcity of subsistence has embittered other sufferings ; while even the anticipations of a return of the blessings of peace and repose, are alloyed, by the sense of heavy and accumulating burdens, which press upon all the departments of industry, and threaten to clog the future springs of government ; our favoured country, happy in a striking contrast, has enjoyed general tranquillity ; a tranquillity the more satisfactory, because maintained at the expense of no duty. Faithful to ourselves, we have violated no obligation to others. Our agriculture, commerce and manufactures prosper beyond former example ; the molestations of our trade (to prevent a continuance of which, however, very pointed remonstrances have been made) being overbalanced by the aggregate benefits which it derives from a neutral position. Our population advances with a celerity, which, exceeding the most sanguine calculations, proportionally augments our strength and resources, and guaranties our future security. Every part of the Union displays indications of rapid and various improvement, and with burdens so light as scarcely to be perceived ; with resources fully adequate to our present exigencies ; with governments founded on the genuine principles of rational liberty, and with mild and wholesome laws : is it too much to say, that our country exhibits a

spectacle of national happiness never surpassed, if ever before equalled?

Placed in a situation every way so auspicious, motives of commanding force impel us, with sincere acknowledgment to Heaven, and pure love to our country, to unite our efforts to preserve, prolong and improve our immense advantages. To co-operate with you in this desirable work, is a fervent and favourite wish of my heart.

It is a valuable ingredient in the general estimate of our welfare, that the part of our country, which was lately the scene of disorder and insurrection, now enjoys the blessings of quiet and order. The misled have abandoned their errors, and pay the respect to our constitution and laws, which is due from good citizens to the publick authorities of the society. These circumstances have induced me to pardon, generally, the offenders here referred to; and to extend forgiveness to those who had been adjudged to capital punishment. For though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested; yet it appears to me no less consistent with the publick good, than it is with my personal feelings, to mingle in the operations of government every degree of moderation and tenderness, which the national justice, dignity and safety may permit.

Gentlemen,—Among the objects which will claim your attention in the course of the session, a review of our military establishment is not the least important. It is called for by the events which have changed, and may be expected still further to change the relative situation of our frontiers. In this review, you will doubtless allow due weight to the considerations, that the questions between us and certain foreign powers, are not yet finally adjusted; that the war in Europe is not yet terminated; and that our western posts, when recovered, will demand provision for garrisoning and securing them. A statement of our present military force will be laid before you by the department of war.

With the review of our army establishment, is naturally connected that of the militia. It will merit inquiry, what imperfections in the existing plan, further experience may have unfolded. The subject is of so much moment in

my estimation, as to excite a constant solicitude, that the consideration of it may be renewed, till the greatest attainable perfection shall be accomplished. Time is wearing away some advantages for forwarding the object, while none better deserves the persevering attention of the publick councils.

While we indulge the satisfaction, which the actual condition of our western borders so well authorizes, it is necessary that we should not lose sight of an important truth, which continually receives new confirmations, namely, that the provisions heretofore made with a view to the protection of the Indians from the violences of the lawless part of our frontier inhabitants, are insufficient. It is demonstrated that these violences can now be perpetrated with impunity; and it can need no argument to prove, that unless the murdering of Indians can be restrained by bringing the murderers to condign punishment, all the exertions of the government to prevent destructive retaliations by the Indians, will prove fruitless, and all our present agreeable prospects illusory. The frequent destruction of innocent women and children, who are chiefly the victims of retaliation, must continue to shock humanity; and an enormous expense, to drain the treasury of the Union.

To enforce upon the Indians the observance of justice, it is indispensable that there shall be competent means of rendering justice to them. If these means can be devised by the wisdom of Congress; and especially if there can be added an adequate provision for supplying the necessities of the Indians, on reasonable terms, (a measure, the mention of which I the more readily repeat, as in all the conferences with them, they urge it with solicitude) I should not hesitate to entertain a strong hope of rendering our tranquillity permanent. I add, with pleasure, that the probability even of their civilization, is not diminished by the experiments which have been thus far made, under the auspices of government. The accomplishment of this work, if practicable, will reflect undecaying lustre on our national character, and administer the most grateful consolations that virtuous minds can know.

Gentlemen of the House of Representatives,—The state of our revenue, with the sums which have been borrowed

and reimbursed, pursuant to different acts of Congress, will be submitted from the proper department, together with an estimate of the appropriations necessary to be made for the service of the ensuing year.

Whether measures may not be advisable to reinforce the provision for the redemption of the publick debt, will naturally engage your examination. Congress have demonstrated their sense to be, and it were superfluous to repeat mine, that whatsoever will tend to accelerate the honourable extinction of our publick debt, accords as much with the true interest of our country, as with the general sense of our constituents.

Gentlemen of the Senate and House of Representatives,—
The statements which will be laid before you relative to the mint, will show the situation of that institution; and the necessity of some further legislative provisions, for carrying the business of it more completely into effect; and for checking abuses which appear to be arising in particular quarters.

The progress in providing materials for the frigates, and in building them; the state of the fortifications of our harbours; the measures which have been pursued for obtaining proper sites for arsenals, and for replenishing our magazines with military stores; and the steps which have been taken towards the execution of the law for opening a trade with the Indians; will likewise be presented for the information of Congress.

Temperate discussion of the important subjects which may arise in the course of the session; and mutual forbearance where there is a difference of opinion, are too obvious and necessary for the peace, happiness and welfare of our country, to need any recommendation of mine.

GEORGE WASHINGTON.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES RELATIVE
TO TREATY WITH MOROCCO. DEC. 21, 1795.

[See Vol. Confidential Documents.]

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CONGRESS.

JAN. 4, 1796.

A LETTER from the minister plenipotentiary of the French Republick, received on the 22d of the last month, covered an address, dated the 21st of October, 1794, from the committee of publick safety to the representatives of the United States in Congress; and also informed me, that he was instructed by the committee, to present to the United States, the colours of France. I thereupon proposed to receive them last Friday, the first day of the new year, a day of general joy and congratulation. On that day, the minister of the French Republick delivered the colours, with an address, to which I returned an answer. By the latter, the house will see, that I have informed the minister, that the colours will be deposited with the archives of the United States. But it seemed to me proper, previously to exhibit to the two houses of Congress, these evidences of the continued friendship of the French Republick, together with the sentiments expressed by me on the occasion, in behalf of the United States. They are herewith communicated.

GEORGE WASHINGTON.

TRANSLATION.

The Representatives of the French people, composing the Committee of Publick Safety of the National Convention, charged by the law of the 7th Fructidor, with the direction of Foreign Relations, to the Representatives of the United States of America, in Congress assembled.

CITIZENS REPRESENTATIVES,—The connections which nature,—reciprocal wants; and a happy concurrence of circumstances, have formed between two free nations, cannot but be indissoluble. You have strengthened those sacred ties, by the declarations, which the minister plenipotentiary of the United States, has made in your name, to the National Convention, and to the French people.

They have been received with rapture by a nation, who know how to appreciate every testimony which the United States have given to them of their affection. The colours of both nations, united in the centre of the National Convention, will be an everlasting evidence of the part which the United States have taken in the success of the French Republick.

You were the first defenders of the rights of man, in another hemisphere. Strengthened by your example, and endowed with an invincible energy, the French people have vanquished that tyranny, which, during so many centuries of ignorance, superstition, and baseness, had enchained a generous nation.

Soon did the people of the United States perceive, that every victory of ours, strengthened their independence and happiness. They were deeply affected at our momentary misfortunes, occasioned by treasons, purchased by English gold. They have celebrated with rapture the successes of our brave armies.

None of these sympathetick emotions have escaped the sensibility of the French nation. They have all served to cement the most intimate and solid union that has ever existed between two nations.

The citizen Adet, who will reside near your government, in quality of minister plenipotentiary of the French Republick, is specially instructed to tighten these bands of fraternity and mutual benevolence. We hope that he may fulfil this principal object of his mission, by a conduct worthy of the confidence of both nations, and of the reputation which his patriotism and virtues have acquired him.

An analogy of political principles,—the natural relations of commerce and industry;—the efforts and immense sacrifices of both nations in the defence of liberty and equality; the blood which they have spilled together; their avowed hatred for despots;—the moderation of their political views; the disinterestedness of their councils;—and especially the success of the vows which they have made in presence of the Supreme Being, to be free or die; all combine to render indestructible the connections which they have formed.

Doubt it not, citizens;—we shall finally destroy the combination of tyrants;—you, by the picture of prosperi-

ry, which in your vast countries, has succeeded to a bloody struggle of eight years: we, by that enthusiasm which glows in the breast of every Frenchman. Astonished nations, too long the dupes of perfidious kings, nobles, and priests, will eventually recover their rights, and the human race, will owe to the American and French nations, their regeneration and a lasting peace.

Paris, 30th Vendemaire, 3d year of the French Republick, one and indivisible.

The members of the committee of publick safety,

J. S. B. DELMAS, MERLIN (of Douai,) &c. &c.

October 21, 1794.

Faithfully translated from the original, by
GEO. TAYLOR, Jun.

Speech of the Minister Plenipotentiary of the French Republick, to the President of the United States, on his presenting the Colours of France to the United States. Jan. 1, 1796.

MR. PRESIDENT,—I come to acquit myself of a duty very dear to my heart: I come to deposit in your hands and in the midst of a people justly renowned for their courage and their love of liberty, the symbol of the triumphs and of the enfranchisement of my nation.

When she broke her chains; when she proclaimed the imprescriptible rights of man; when in a terrible war she sealed with her blood the covenant she had made with liberty, her own happiness was not alone the object of her glorious efforts; her views extend also to all free people. She saw their interest blended with her own, and doubly rejoiced in her victories, which, in assuring to her the enjoyment of her rights, became to them new guarantees of their independence.

These sentiments, which animated the French nation from the dawn of their revolution, have acquired new strength since the foundation of the Republick. France, at that time, by the form of its government, assimilated to, or rather identified with, free people, saw in them only friends and brothers. Long accustomed to regard the American people as her most faithful allies, she has sought

to draw closer the ties already formed in the fields of America, under the auspices of victory, over the ruins of tyranny.

The National Convention, the organ of the will of the French nation, have more than once expressed their sentiments to the American people; but above all, these burst forth on that august day, when the minister of the United States presented to the National Representation the colours of his country. Desiring never to lose recollections as dear to Frenchmen, as they must be to Americans, the Convention ordered that these colours should be placed in the hall of their sittings. They had experienced sensations too agreeable not to cause them to be partaken of by their allies, and decreed that to them the national colours should be presented.

Mr. President,—I do not doubt their expectation will be fulfilled, and I am convinced that every citizen will receive, with a pleasing emotion, this flag, elsewhere the terror of the enemies of liberty, here the certain pledge of faithful friendship; especially when they recollect that it guides to combat, men, who have shared their toils, and who were prepared for liberty, by aiding them to acquire their own.

P. A. ADET.

Faithfully translated from the original, by

GEO. TAYLOR, JUN.

The Answer of the President of the United States to the Address of the Minister Plenipotentiary of the French Republick, on his presenting the colours of France to the United States.

BORN, sir, in a land of liberty; having early learned its value; having engaged in a perilous conflict to defend it; having, in a word, devoted the best years of my life to secure its permanent establishment in my own country; my anxious recollections, my sympathetick feelings, and my best wishes are irresistibly excited, whensoever, in any country, I see an oppressed nation unfurl the banners of freedom. But above all, the events of the French revolution have produced the deepest solicitude, as well

as the highest admiration. To call your nation brave were to pronounce but common praise. Wonderful people! Ages to come will read with astonishment the history of your brilliant exploits! I rejoice, that the period of your toils and of your immense sacrifices, is approaching. I rejoice that the interesting revolutionary movements of so many years have issued in the formation of a constitution designed to give permanency to the great object for which you have contended. I rejoice that liberty, which you have so long embraced with enthusiasm,—liberty, of which you have been the invincible defenders, now finds an asylum in the bosom of a regularly organized government;—a government, which, being formed to secure the happiness of the French people, corresponds with the ardent wishes of my heart, while it gratifies the pride of every citizen of the United States, by its resemblance to their own. On these glorious events, accept, sir, my sincere congratulations.

In delivering to you these sentiments, I express not my own feelings only, but those of my fellow citizens, in relation to the commencement, the progress, and the issue of the French revolution: and they will cordially join with me in purest wishes to the Supreme Being, that the citizens of our sister republick, our magnanimous allies, may soon enjoy in peace, that liberty which they have purchased at so great a price, and all the happiness which liberty can bestow.

I receive, sir, with lively sensibility, the symbol of the triumphs and of the enfranchisement of your nation, the colours of France, which you have now presented to the United States. The transaction will be announced to Congress; and the colours will be deposited with those archives of the United States, which are at once the evidences and the memorials of their freedom and independence. May these be perpetual! and may the friendship of the two Republicks be commensurate with their existence.

GEO. WASHINGTON.

United States, }
January 1st, 1796. }

True copy, GEO. TAYLOR, JUN. Chief Clerk
in the Dep. of State.

The House proceeded to consider the said message and papers : Whereupon,

Resolved unanimously, That the President of the United States be requested to make known to the Representatives of the French people, that this House hath received, with the most sincere and lively sensibility, the communication of the committee of publick safety, dated the 21st October, 1794, accompanied with the colours of the French Republick; and to assure them, that the presentation of the colours of the French Republick to the Congress of the United States, is deemed the most honourable testimonial of the existing sympathies and affections of the two Republicks, founded upon their solid and reciprocal interests;—and that this House rejoices in the opportunity thereby afforded, to congratulate the French nation upon the brilliant and glorious achievements which have been accomplished under their influence, during the present afflicting war; and confidently hopes, that those achievements will be attended with the perfect attainment of their object—the permanent establishment of the liberties and happiness of a great and magnanimous people.

Ordered, that Mr. Giles and Mr. Samuel Smith be appointed a committee to wait on the President, with the foregoing resolution.

Extract from the Journal,

JOHN BECKLEY, Clerk.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO
INTERCOURSE WITH SPAIN. FEB. 29, 1796.

[See Vol. Confidential Documents.]

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CONGRESS. MARCH 25, 1796.

I SEND herewith, for your information, the translation of a letter from the minister plenipotentiary of the French Republick to the Secretary of State, announcing the peace made by the Republick with the kings of Prussia and Spain, the Grand Duke of Tuscany, and the Landgrave of Hesse Cassel; and that the republican constitution decreed by the National Convention, had been accepted by the people of France, and was in operation. I also send you a copy of the answer given by my direction to this communication from the French minister. My sentiments therein expressed, I am persuaded, will harmonize with yours, and with those of all my fellow citizens.

GEO. WASHINGTON.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 21st Ventose, 4th year of the French Republick, one and indivisible. (The 11th March, 1796, O. S.)

SIR,—The committee of publick safety, by their last despatches, charged me to announce to you that peace had been made between the French Republick and the kings of Prussia and of Spain, the Grand Duke of Tuscany, and the Landgrave of Hesse Cassel.

With very great satisfaction I acquit myself of the duty enjoined on me by the committee. I am persuaded, sir, that the government of the United States will participate in it; and that, since the French people are combating for liberty, it cannot observe their successes with an eye of indifference.

I embrace this opportunity of announcing to you that the republican constitution decreed by the National Con-

vention, has been accepted by the French people, and that the constitutional government is in operation.

Accept, sir, &c.

P. A. ADET.

Department of State, March 14, 1796.

SIR,—I have laid before the President of the United States, the letter with which you honoured me on the 11th instant, and I am directed to assure you of the high and sincere satisfaction he derives from the information you were charged by the committee of publick safety, to communicate, that peace had been made between the French Republick and the kings of Prussia and Spain, the Grand Duke of Tuscany, and the Landgrave of Hesse Cassel. With equal satisfaction the President receives the farther information which you have been pleased to give, that the republican constitution decreed by the National Convention, has been accepted by the French people, and that the constitutional government is in operation.

With great respect, I am, sir, &c.

TIMOTHY PICKERING.

Faithfully translated, and copied from the originals, by
GEO. TAYLOR, JUN.

MESSAGE

OF THE PRESIDENT OF THE UNITED STATES TO THE HOUSE
OF REPRESENTATIVES,

Assigning his reasons for not complying with their resolution of the 25th inst. requesting "a copy of the instructions, correspondence, and other documents relative to the treaty lately concluded between the United States and Great Britain." March 30, 1796.

Gentlemen of the House of Representatives,

WITH the utmost attention I have considered your resolution of the 24th inst. requesting me to lay before your House, a copy of the instructions to the minister of the

United States, who negotiated the treaty with the king of Great Britain, together with the correspondence and other documents relative to that treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed.

In deliberating upon this subject, it was impossible for me to lose sight of the principle which some have avowed in its discussion, or to avoid extending my views to the consequences which must flow from the admission of that principle.

I trust that no part of my conduct has ever indicated a disposition to withhold any information which the constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right ; and with truth I affirm, that it has been, as it will continue to be while I have the honour to preside in the government, my constant endeavour to harmonize with the other branches thereof, so far as the trust delegated to me by the people of the United States, and my sense of the obligation it imposes to "preserve, protect, and defend the constitution," will permit.

The nature of foreign negotiations requires caution ; and their success must often depend on secrecy ; and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions, which may have been proposed or contemplated, would be extremely impolitick ; for this might have a pernicious influence on future negotiations, or produce immediate inconveniences ; perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate ; the principle on which that body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives, to demand, and to have, as a matter of course, all the papers respecting a negotiation with a foreign power, would be to establish a dangerous precedent.

It does not occur, that the inspection of the papers asked for, can be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed. I repeat, that I have no disposition to withhold any informa-

tion which the duty of my station will permit, or the publick good shall require, to be disclosed; and, in fact, all the papers affecting the negotiation with Great Britain, were laid before the Senate, when the treaty itself was communicated for their consideration and advice.

The course which the debate has taken on the resolution of the House, leads to some observations on the mode of making treaties under the constitution of the United States.

Having been a member of the General Convention, and knowing the principles on which the constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the government to this moment, my conduct has exemplified that opinion, that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated, thenceforward became the law of the land. It is thus that the treaty making power has been understood by foreign nations; and in all the treaties made with them, *we* have declared, and *they* have believed, that when ratified by the President, with the advice and consent of the Senate, they became obligatory. In this construction of the constitution, every House of Representatives has heretofore acquiesced; and until the present time, not a doubt or suspicion has appeared to my knowledge, that this construction was not the true one. Nay, they have more than acquiesced; for till now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect.

There is also reason to believe that this construction agrees with the opinions entertained by the state conventions, when they were deliberating on the constitution; especially by those who objected to it, because there was not required in *commercial treaties* the consent of two-thirds of the whole number of the members of the Senate, instead of two-thirds of the Senators present; and because in treaties respecting territorial and certain other rights and claims, the concurrence of three-fourths of the whole number of the members of both Houses respectively was not made necessary.

It is a fact declared by the General Convention, and universally understood, that the constitution of the United

States was the result of a spirit of amity and mutual concession. And it is well known that under this influence, the smaller states were admitted to an equal representation in the Senate, with the larger states; and that this branch of the government was invested with great powers; for on the equal participation of those powers the sovereignty and political safety of the smaller states were deemed essentially to depend.

If other proofs than these, and the plain letter of the constitution itself, be necessary to ascertain the point under consideration, they may be found in the journals of the General Convention, which I have deposited in the office of the department of state. In those journals it will appear that a proposition was made, "that no treaty should be binding on the United States which was not ratified by a law;" and that the proposition was explicitly rejected.

As, therefore, it is perfectly clear to my understanding, that the assent of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits, in itself, all the objects requiring legislative provision, and on these the papers called for can throw no light; and as it is essential to the due administration of the government, that the boundaries fixed by the constitution between the different departments, should be preserved—a just regard to the constitution, and to the duty of my office, under all the circumstances of this case, forbid a compliance with your request.

GEO. WASHINGTON.

SPEECH

OF THE PRESIDENT OF THE UNITED STATES TO BOTH
HOUSES OF CONGRESS. DEC. 7, 1796.

Fellow citizens of the Senate,
and of the House of Representatives,

IN recurring to the internal situation of our country, since I had last the pleasure to address you. I find ample

reason for a renewed expression of that gratitude to the Ruler of the Universe, which a continued series of prosperity has so often and so justly called forth.

The acts of the last session, which required special arrangements, have been, as far as circumstances would admit, carried into operation.

Measures calculated to ensure a continuance of the friendship of the Indians, and to preserve peace along the extent of our interior frontier, have been digested and adopted. In the framing of these, care has been taken to guard, on the one hand, our advanced settlements from the predatory incursions of those unruly individuals who cannot be restrained by their tribes; and on the other hand, to protect the rights secured to the Indians by treaty; to draw them nearer to the civilized state; and inspire them with correct conceptions of the power, as well as justice of the government.

The meeting of the deputies from the Creek nation at Colerain, in the state of Georgia, which had for a principal object the purchase of a parcel of their land by that state, broke up without its being accomplished; the nation having, previous to their departure, instructed them against making any sale: the occasion, however, has been improved, to confirm by a new treaty with the Creeks, their pre-existing engagements with the United States; and to obtain their consent to the establishment of trading houses, and military posts within their boundary; by means of which, their friendship, and the general peace may be more effectually secured.

The period during the late session at which the appropriation was passed for carrying into effect the treaty of amity, commerce and navigation between the United States and his Britannick majesty, necessarily procrastinated the reception of the posts stipulated to be delivered, beyond the date assigned for that event. As soon, however, as the governor general of Canada could be addressed with propriety on the subject, arrangements were cordially and promptly concluded for their evacuation, and the United States took possession of the principal of them, comprehending Oswego, Niagara, Detroit, Michellimakinac and Fort Miami, where such repairs and additions have been ordered to be made, as appeared indispensable.

The commissioners appointed on the part of the United States and of Great Britain, to determine which is the river St. Croix mentioned in the treaty of peace of 1783, agreed in the choice of Egbert Benson, Esq. of New York, for the third commissioner. The whole met at St. Andrews, in Passamaquoddy bay, in the beginning of October; and directed surveys to be made of the rivers in dispute; but deeming it impracticable to have these surveys completed before the next year, they adjourned, to meet in Boston, in August, 1797, for the final decision of the question.

Other commissioners appointed on the part of the United States, agreeably to the seventh article of the treaty with Great Britain, relative to captures and condemnation of vessels and other property, met the commissioners of his Britannick majesty, in London, in August last, when John Trumbull, Esq. was chosen by lot, for the fifth commissioner. In October following, the board were to proceed to business. As yet, there has been no communication of commissioners on the part of Great Britain, to unite with those who have been appointed on the part of the United States, for carrying into effect the sixth article of the treaty.

The treaty with Spain required that the commissioners for running the boundary line between the territory of the United States and his Catholick majesty's provinces of East and West Florida, should meet at the Natchez before the expiration of six months after the exchange of the ratifications, which was effected at Aranjuez, on the twenty-fifth day of April; and the troops of his Catholick majesty occupying any posts within the limits of the United States, were, within the same period to be withdrawn. The commissioner of the United States therefore commenced his journey for the Natchez in September; and troops were ordered to occupy the posts from which the Spanish garrisons should be withdrawn. Information has been recently received of the appointment of a commissioner on the part of his Catholick majesty for running the boundary line; but none of any appointment for the adjustment of the claims of our citizens whose vessels were captured by the armed vessels of Spain.

In pursuance of the act of Congress passed in the last session, for the protection and relief of American seamen, agents were appointed, one to reside in Great Britain,

and the other in the West Indies. The effects of the agency in the West Indies are not yet fully ascertained; but those which have been communicated afford grounds to believe the measure will be beneficial. The agent destined to reside in Great Britain, declining to accept the appointment, the business has consequently devolved on the minister of the United States in London, and will command his attention, until a new agent shall be appointed.

After many delays and disappointments, arising out of the European war, the final arrangements for fulfilling the engagements made to the dey and regency of Algiers, will, in all present appearance, be crowned with success; but under great, though inevitable disadvantages, in the pecuniary transactions, occasioned by that war, which will render a further provision necessary. The actual liberation of all our citizens, who were prisoners in Algiers, while it gratifies every feeling heart, is itself an earnest of a satisfactory termination of the whole negotiation. Measures are in operation for effecting treaties with the regencies of Tunis and Tripoli.

To an active external commerce, the protection of a naval force is indispensable. This is manifest with regard to wars in which a state is itself a party. But besides this, it is in our own experience, that the most sincere neutrality is not a sufficient guard against the depredations of nations at war. To secure respect to a neutral flag, requires a naval force, organized and ready to vindicate it from insult or aggression. This may even prevent the necessity of going to war, by discouraging belligerent powers from committing such violations of the rights of the neutral party, as may, first or last, leave no other option. From the best information I have been able to obtain, it would seem as if our trade to the Mediterranean, without a protecting force, will always be insecure, and our citizens exposed to the calamities from which numbers of them have but just been relieved.

These considerations invite the United States to look to the means, and to set about the gradual creation of a navy. The increasing progress of their navigation promises them, at no distant period, the requisite supply of seamen; and their means, in other respects, favour the undertaking. It is an encouragement, likewise, that their

particular situation will give weight and influence to a moderate naval force in their hands. Will it not then be advisable to begin, without delay, to provide and lay up the materials for the building and equipping of ships of war; and to proceed in the work, by degrees, in proportion as our resources shall render it practicable without inconvenience; so that a future war of Europe may not find our commerce in the same unprotected state, in which it was found by the present?

Congress have repeatedly, and not without success, directed their attention to the encouragement of manufactures. The object is of too much consequence not to ensure a continuance of their efforts in every way which shall appear eligible. As a general rule, manufactures on publick account are inexpedient. But where the state of things in a country leaves little hope that certain branches of manufacture will, for a great length of time, obtain; when these are of a nature essential to the furnishing and equipping of the publick force in time of war; are not establishments for procuring them on publick account, *to the extent of the ordinary demand for the publick service*, recommended by strong considerations of national policy, as an exception to the general rule? Ought our country to remain in such cases dependent on foreign supply, precarious, because liable to be interrupted? If the necessary articles should in this mode, cost more in time of peace, will not the security and independence thence arising, form an ample compensation? Establishments of this sort, commensurate only with the calls of the publick service in time of peace, will, in time of war, easily be extended in proportion to the exigencies of the government; and may even, perhaps, be made to yield a surplus for the supply of our citizens at large, so as to mitigate the privations from the interruption of their trade. If adopted, the plan ought to exclude all those branches which are already, or likely soon to be established in the country; in order that there may be no danger of interference with pursuits of individual industry.

It will not be doubted, that with reference either to individual or national welfare, agriculture is of primary importance. In proportion as nations advance in population, and other circumstances of maturity, this truth becomes more apparent, and renders the cultivation of the

soil more and more an object of publick patronage. Institutions for promoting it, grow up, supported by the publick purse:—and to what object can it be dedicated with greater propriety? Among the means which have been employed to this end, none have been attended with greater success, than the establishment of Boards, composed of proper characters, charged with collecting and diffusing information, and enabled by premiums, and small pecuniary aids, to encourage and assist a spirit of discovery and improvement. This species of establishment contributes doubly to the increase of improvement, by stimulating to enterprise and experiment, and by drawing to a common centre the results every where, of individual skill and observation; and spreading them thence over the whole nation. Experience accordingly has shown that they are very cheap instruments of immense national benefits.

I have heretofore proposed to the consideration of Congress, the expediency of establishing a national university, and also a military academy. The desirableness of both these institutions, has so constantly increased with every new view I have taken of the subject, that I cannot omit the opportunity of once for all, recalling your attention to them.

The assembly to which I address myself, is too enlightened not to be fully sensible how much a flourishing state of the arts and sciences contributes to national prosperity and reputation. True it is, that our country, much to its honour, contains many seminaries of learning highly respectable and useful; but the funds upon which they rest are too narrow to command the ablest professors, in the different departments of liberal knowledge, for the institution contemplated; though they would be excellent auxiliaries.

Amongst the motives to such an institution, the assimilation of the principles, opinions and manners of our countrymen, by the common education of a portion of our youth from every quarter, well deserves attention. The more homogeneous our citizens can be made in these particulars, the greater will be our prospect of permanent union; and a primary object of such a national institution should be, the education of our youth in the science of government. In a republick, what species of knowledge

can be equally important? and what duty more pressing on its legislature, than to patronise a plan for communicating it to those, who are to be the future guardians of the liberties of the country?

The institution of a military academy, is also recommended by cogent reasons. However pacifick the general policy of a nation may be, it ought never to be without an adequate stock of military knowledge for emergencies. The first would impair the energy of its character, and both would hazard its safety, or expose it to greater evils when war could not be avoided. Besides that war might often not depend upon its own choice. In proportion as the observance of pacifick maxims might exempt a nation from the necessity of practising the rules of the military art, ought to be its care in preserving, and transmitting by proper establishments, the knowledge of that art. Whatever argument may be drawn from particular examples, superficially viewed, a thorough examination of the subject will evince, that the art of war is at once comprehensive and complicated; that it demands much previous study; and that the possession of it, in its most improved and perfect state, is always of great moment to the security of a nation. This, therefore, ought to be a serious care of every government; and for this purpose, an academy, where a regular course of instruction is given, is an obvious expedient, which different nations have successfully employed.

The compensations to the officers of the United States, in various instances, and in none more than in respect to the most important stations, appear to call for legislative revision. The consequences of a defective provision, are of serious import to the government. If private wealth is to supply the defect of publick retribution, it will greatly contract the sphere within which the selection of character for office is to be made, and will proportionally diminish the probability of a choice of men able as well as upright. Besides that it would be repugnant to the vital principles of our government, virtually to exclude from publick trusts, talents and virtue, unless accompanied by wealth.

While in our external relations, some serious inconveniences and embarrassments have been overcome, and others lessened, it is with much pain and deep regret:

mention, that circumstances of a very unwelcome nature have lately occurred. Our trade has suffered, and is suffering extensive injuries in the West Indies, from the cruisers and agents of the French Republick; and communications have been received from its minister here, which indicate the danger of a further disturbance of our commerce by its authority, and which are, in other respects, far from agreeable.

It has been my constant, sincere and earnest wish, in conformity with that of our nation, to maintain cordial harmony, and a perfectly friendly understanding with that Republick. This wish remains unabated; and I shall persevere in the endeavour to fulfil it, to the utmost extent of what shall be consistent with a just and indispensable regard to the rights and honour of our country: nor will I easily cease to cherish the expectation, that a spirit of justice, candour and friendship, on the part of the Republick, will eventually ensure success.

In pursuing this course, however, I cannot forget what is due to the character of our government and nation; or to a full and entire confidence in the good sense, patriotism, self-respect, and fortitude of my countrymen.

I reserve for a special message, a more particular communication on this interesting subject.

Gentlemen of the House of Representatives,—I have directed an estimate of the appropriations necessary for the service of the ensuing year, to be submitted from the proper department; with a view of the publick receipts and expenditures to the latest period to which an account can be prepared.

It is with satisfaction I am able to inform you, that the revenues of the United States continue in a state of progressive improvement.

A reinforcement of the existing provisions for discharging our publick debt, was mentioned in my address at the opening of the last session. Some preliminary steps were taken towards it, the maturing of which will, no doubt, engage your zealous attention during the present. I will only add, that it will afford me a heartfelt satisfaction to concur in such further measures, as will ascertain to our country the prospect of a speedy extinguishment of the debt. Posterity may have cause to regret, if from any

motive, intervals of tranquillity are left unimproved for accelerating this valuable end.

Gentlemen of the Senate, and of the House of Representatives.—My solicitude to see the militia of the United States placed on an efficient establishment, has been so often, and so ardently expressed, that I shall but barely recall the subject to your view on the present occasion, at the same time, that I shall submit to your inquiry, whether our harbours are yet sufficiently secured.

The situation in which I now stand, for the last time, in the midst of the representatives of the people of the United States, naturally recalls the period when the administration of the present form of government commenced; and I cannot omit the occasion to congratulate you, and my country, on the success of the experiment, nor to repeat my fervent supplications to the Supreme Ruler of the universe and Sovereign Arbitrer of nations, that his providential care may still be extended to the United States; that the virtue and happiness of the people may be preserved; and that the government which they have instituted for the protection of their liberties may be perpetual.

GEO. WASHINGTON.

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO
ALGIERS. JAN. 9, 1797.

[See Vol. Confidential Documents.]

MESSAGE

FROM THE PRESIDENT OF THE UNITED STATES TO CON-
GRESS. JAN. 19, 1797.

At the opening of the present session of Congress, I mentioned that some circumstances of an unwelcome nature had lately occurred in relation to France; that our

trade had suffered and was suffering extensive injuries in the West Indies from the cruisers and agents of the French Republick; and that communications had been received from its minister here which indicated danger of a further disturbance of our commerce by its authority, and that were in other respects far from agreeable; but that I reserved for a special message, a more particular communication on this interesting subject. This communication I now make.

The complaints of the French minister embraced most of the transactions of our government in relation to France from an early period of the present war; which therefore it was necessary carefully to review. A collection has been formed, of letters and papers relating to those transactions, which I now lay before you, with a letter to Mr. Pinckney, our minister at Paris, containing an examination of the notes of the French minister, and such information as I thought might be useful to Mr. Pinckney in any further representations he might find necessary to be made to the French government. The immediate object of his mission was to make to that government such explanations of the principles and conduct of our own, as by manifesting our good faith, might remove all jealousy and discontent, and maintain that harmony and good understanding with the French Republick, which it has been my constant solicitude to preserve. A government which required only a knowledge of the *truth* to justify its measures, could not but be anxious to have this fully and frankly displayed.

GEO. WASHINGTON.

From Mr. Pickering, Secretary of State, to Mr. Pinckney. Plenipotentiary of the United States at Paris. Department of State, Jan. 16, 1797.

SIR,—In my letters of the 5th and 26th ult. I sent you two notes from Mr. Adet, the minister of the French Republick to the United States; the former dated the 27th of October, and the other the 15th of November last; and my answer to the first. The latter note, embracing numerous topicks of complaint, and going as far back as the year 1793, required a particular examination of all the transactions of our government from that time to the present. The other indispensable duties of the office prevent-

ed my entering on this examination as early as I had expected, and the current business has retarded the pursuit. The result of this examination I am now, by the direction of the President of the United States, to communicate to you. This history of our affairs you will find supported by documents, many of which were delivered to you at your departure, and the residue will be herewith transmitted. The remarks and reasonings on facts you will duly appreciate; and from the whole, joined with your own observations, you will be enabled, it is believed, to vindicate the United States, and to demonstrate their impartiality as a neutral nation, their fidelity in the observation of treaties, and their friendship as an ally.

The discussion on which I am entering will involve much repetition; for the general questions and particular cases grouped together in the minister's last note, have been subjects of controversy and correspondence from May, 1793, to this day. Some other points have indeed been contended for, which the minister has now passed without notice. Why they are omitted I know not; for in these cases the United States were as positively charged with violating treaties, as in those which he has been pleased now to detail. Some of them it may be found proper to introduce, to render less imperfect the view of our relations to France.

The complaints of the French minister against the United States, have reference to three principal subjects.

1st. To the abandonment of their neutral rights to the injury of France, in not maintaining the pretended principles of the modern law of nations, *That free ships make free goods*, and that timber and naval stores for the equipment and armament of vessels, are not contraband of war.

2d. To violations of our treaties with France, even in their letter.

3d. To the treaty of amity and commerce between the United States and Great Britain; which he alleges "deprives France of all the advantages stipulated in a previous treaty." A fourth complaint is truly ingenious. The fortune of war has constrained some of the belligerent powers from enemies, to become her allies; and if the alleged abandonment of the rules of the modern law of nations, in its consequences, works an injury to those allies, from that moment France is also injured. Perhaps it

will be in time to notice this last charge when those allies themselves complain; if the answer to the first, involving the same principle, should not render such notice altogether unnecessary.

I shall now present to your view those facts and observations which will prove, we conceive, that the minister's complaints are without any just foundation.

Under the first charge, that we have not maintained, as we ought to have done, our neutral rights, it is alleged;

1st. That the position, *that free ships make free goods*, is an established principle of the modern law of nations, and that Great Britain, by capturing French property on board our vessels, has violated our neutral rights; and that unless we compel Great Britain to respect those rights, France will be justified in violating them.

Not to remark on the singular reasoning, that if one warring power commits an act of injustice towards a neutral and innocent nation, another warring power may lawfully commit the like injustice, we may ask what authority is adduced to show that the modern law of nations has established the principle, *That free ships make free goods?* Vattel says positively, “*that effects belonging to an enemy found on board a neutral ship, are seizable by the rights of war.” Agreeably to this long established rule of the law of nations France herself, in her marine laws, has directed that *the merchandises and effects belonging to her enemies which shall be found on board neutral vessels shall be good prize.*† By a former law, indeed, the neutral vessels themselves, as well as the effects of her enemies on board, were declared to be good prize. ‡ Valin remarks, however, that this regulation was peculiar to France and Spain; and that elsewhere the *goods* of the enemy were *alone* subjected to confiscation. And in the treaty of France with the city of Hamburg, in 1769, it was stipulated that “all effects, provisions and merchandise whatsoever belonging to her enemies and found on board the vessels of Hamburg should be confiscated.”

Mr. Adet remarks, that one of his predecessors, in July, 1793, applied on this subject to the government of the United States, but was unsuccessful. He must refer to

* Book 3. sec. 115.

† Valin, page 250, Reg. Oct. 21, 1744, art. 5.

‡ Valin, vol 2. page 252, 253.

Mr. Genet's letter to Mr. Jefferson, dated July 9th, 1793,* [the subject was resumed in terms still more extraordinary in his letter of July 25th, 1793,] to which Mr. Jefferson answered on the 21th, declaring "his belief that it cannot be doubted but that by the general law of nations, the goods of a friend found in the vessel of an enemy are lawful prize."—"It is true that sundry nations, desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port and detained, under pretence of having enemy goods on board, have, in many instances, introduced, *by their special treaties*, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; but this is altogether the effect of particular treaty, controlling, in *special cases*, the *general principle* of the law of nations, and therefore taking effect between such nations only as have so agreed to control it." And it is plain, that it was to avoid the inconveniences resulting from this general rule of the law of nations, that France and the United States stipulated, in the 23d article of their commercial treaty, "That free ships should give freedom to goods; and that every thing should be deemed free which should be found on board the ships belonging to the subjects of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted." It is also plain that this stipulation was intended to operate (indeed it was its sole object and otherwise could have no operation at all) when one of the parties should be at war with a nation or nations with whom the other should be at peace. France, therefore, has now no right to complain if the goods of her enemies find protection on board American ships, or to pretend, that in order "to restore the balance of neutrality to its equilibrium," she may seize on such goods: the just equilibrium between her and the United States will be restored when we are at war and she at peace; at which time the goods of our enemies will find protection on board the vessels of her citizens.

2d. It is alleged that we have abandoned the modern publick law on contraband, and by our treaty with Great

* State Papers, vol. 1, p. 124.

Britain *granted* to that power, exclusively, the free carriage of articles for the equipment and armament of vessels.

Here as in the former case the question recurs, what is the law of nations on the point in dispute? *Vattel defines contraband goods to be "commodities particularly used in war—such are arms, military and *naval* stores, *timber*, horses and even provisions in certain junctures, when there are hopes of reducing the enemy by famine." In the treaty between France and Denmark, concluded on the 23d of August, 1742,† "Tar was declared contraband, together with rosin, sails, hemp, cordage, masts and timber for ship building." "Thus, on this account (says Valin) there would have been no cause for complaining of the conduct of the English, if they had not infringed particular treaties; for of right these things are now contraband, and have been so since the beginning of this century, which, however, was not the case formerly." "The modern publick law on contraband," mentioned by Mr. Adet and his predecessors, probably refers to the principles declared by the armed neutrality during the American war. This transaction is too remarkable to be passed unnoticed.

During that war, Great Britain and the other belligerent powers, exercising the rights assured to them by the law of nations, made prize of enemies' property on board neutral vessels, and of contraband goods belonging to neutrals. Eager as neutral nations must be to seize the opportunity which war presents, of becoming the carriers for the belligerent nations, whose ships and mariners are wanted for military operations, it was perfectly natural that the former should desire to establish as a rule that free ships should make free goods—or in other words, that neutral bottoms should protect the goods on board to whomsoever these belonged; and it was equally natural for them to desire to diminish the list of contraband. In respect to the latter, it must have been particularly interesting to the three northern maritime powers, from whose dominions chiefly the other maritime nations of Europe received supplies of timber and naval stores, to strike these from the list of contraband, or by some means to exempt them from capture.

With these dispositions, the Empress of Russia, in Feb-

* Book 7, sec. 112.

† Valin, vol. 2, page 264.

ruary, 1780, made publick the principles on which she would maintain the commerce of her subjects. It is necessary here to recite only two of them. 1. That all the effects belonging to subjects of the nations at war should be free on board neutral vessels; contraband goods excepted. 2. That the articles of contraband, should be regulated by the 10th and 11th articles of her treaty of commerce with Great Britain, extending the regulations of those articles to all the belligerent powers.

To enforce the observance of these principles, she gave orders for equipping a considerable part of her marine.

In July of the same year, Denmark acceded to the principles of the armed neutrality, and entered into a convention with Russia, for maintaining them, assuming for her rule in determining what articles should be deemed contraband, her treaty of commerce with Great Britain, concluded the 11th of July, 1670. In the 3d article of this treaty, the description of contraband goods is in general terms: "Any provisions of war, as soldiers, arms, machines, cannon, ships, or other things of necessary use in war." But by a convention concluded at London on the 4th of July, 1780, between Great Britain and Denmark, "To explain the treaty of commerce of 1670 between the two powers," the articles deemed contraband are particularly enumerated, and among them we see "timber for ship building, tar, rosin, copper in sheets, sails, hemp and cordage, and generally whatever serves directly for the equipment of a vessel, unwrought iron and fir planks excepted." It is remarkable that these are the very articles admitted as contraband in the 18th article of our treaty of commerce with Great Britain, and for which admission Mr. Adet declares "all the commercial relations between France and the United States are entirely broken."

But it is further to be noticed that this convention between Russia and Denmark, concluded in the midst of the American war, for maintaining the principles of the armed neutrality, and to which other European powers acceded, is explicitly declared, in the 9th article, to have been concluded and agreed on *for the time that war should last*;* though it was to serve as a basis to future engagements which circumstances might render necessary, on account

* Hist. armed neutrality, page 77, Marten's Treaties, vol 2, page 103.

of new naval wars in Europe; and with the latter view the king of Sweden manifested the utmost solicitude lest the war should be closed without the intervention of the neutral powers. He therefore, was urgent that the Empress, with all the parties to the maritime convention, “*should propose to the belligerent powers the establishing of a Congress, in which the different concerns, both of the powers at war and of the neutral states, should be examined and terminated.”—And these concerns he afterwards mentions to be “the pacification, *and the settling of a maritime code of laws* ;” objects truly important, and meriting all the solicitude manifested on the occasion by the king.

But these steps of the king of Sweden serve as additional proofs that the principles of the armed neutrality were not considered by the parties to the maritime convention, as sanctioned by the existing law of nations. For permanently to establish those assumed principles, by introducing them into a maritime code, was obviously the influential motive with the king for desiring a Congress, at which such a code might be settled with the assent of all the nations of Europe. But this project did not succeed: no Congress was formed: the belligerent powers made peace at different periods;—and with that war ended the maritime convention. This no nation has more reason to regret than our own, as well because the principles in question respect some very valuable portions of our exports, as because our disposition and our policy preserving us in peace, such an extended liberty of commerce would prove highly advantageous to us as carriers for the powers at war.

We have seen then, that the law of nations, the marine laws of France, her own treaties as well as those of other nations, and even the system of the armed neutrality, incontestably establish these principles, that enemy's goods on board of neutral vessels are rightful subjects of capture and condemnation; and that timber and other articles for the equipment and armament of ships, are contraband of war: and, therefore, that the admission of these principles, in the treaty between the United States and Great Britain, not being a grant to her of any right

* Hist. arm. neut page 147, 150.

(for in what sense could we be said to give what she before possessed?) furnishes no just ground of offence to France. In what sense too can the United States be said to have "*refused* to other nations a right" which they and we voluntarily and mutually agreed to *renounce*? Or how are we chargeable with "*partiality* in favour of England," because we do not take arms to *compel* her also to *renounce* it?

But Mr. Adet, still resting on the idea that not to *compel* Great Britain to *renounce*, is to *grant* her a *right*, seems to imagine that we shall attempt to obviate his complaints by saying, "that France having the right by her treaty of 1778, to enjoy all the advantages in commerce and navigation which the United States have granted to England, is not injured by the stipulations of the treaty of 1794, (with Great Britain,) relative to contraband of war, as they become common to her." But we shall say no such thing. The 2d article to which he refers has no relation to this subject. Had we *granted* any particular *favour* to Great Britain, or to any other nation, in respect to commerce and navigation, we readily admit that by this article France would be immediately entitled to the same. But in regard to contraband of war, *we have granted nothing*, and therefore, under that article, *France can claim nothing*.

Under the influence of present and temporary interests, the very *nature* of the stipulations between France and the United States, on the subject of free commerce and the limitation of contraband, seems to be forgotten. They took for the basis of their treaty "*the most perfect equality and reciprocity*:" would they then conspire to their own hurt? would they *voluntarily*, and *mutually* stipulate for *injuries*? Or for *advantages*? Certainly the latter; and both considered the agreement reciprocally *advantageous* which secured to each, in its turn, the freedom of commerce provides by the rules, that free ships should make free goods;—and that timber and naval stores should be excluded from the list of contraband.

Connected with this subject is what concerns the article of *provisions*. Mr. Adet says that "after having assured to the English the carriage of naval stores, the federal government *wished* to assure them that of meals; in a word, *it desired to have commerce only with England*. Thus it stipulates by the 12th article, that the American vessels

laden with grain, may be seized under the *frivolous pretext*, that it is extremely difficult to define the cases wherein provisions, and other articles, which are generally excepted, could be classed in the list of contraband of war."

There are so many extraordinary assertions in Mr. Adet's notes, those in the above paragraph excite no surprise. The federal government is constituted of citizens who have a common interest with their fellow citizens of the United States. That common interest has a peculiar relation to commerce, on the freedom and extension of which the publick revenue and the general prosperity of our country chiefly depend. Will it then be believed that the government *wished* this commerce to be *restrained*, particularly the commerce in *meals*, which compose the most valuable part of our exports? Especially will it be believed that the government *desired* that our citizens might have commerce *only* with *England*? Let the general sense of our fellow citizens answer these charges. Let the great mass of our commercial brethren answer—they whose enterprise traverses every sea and explores every region of the globe, to extend their gainful trade; citizens whose commercial adventures to France and her colonies have risen annually to many millions; adventures by which many have hazarded their credit and their fortunes. Yet among all our citizens none have been more solicitous to form a commercial treaty with Britain; none more decided in approving that which has been made.

For the reasoning of our own government on this subject, I beg leave to refer you to my letter of September 12, 1795, written by the President's direction to Mr. Monroe. Therein it was attempted to show the *necessity* and our *right* of forming that treaty with Great Britain, and I hope it will appear to you that the conclusion is there fairly drawn; that even the 18th article as it respects provisions, would operate favourably to France.

Before the treaty with Great Britain, her cruisers captured neutral vessels bound to France with provisions. She asserted that in certain cases, provisions were contraband of war; consequently, that she might lawfully capture and confiscate such provisions. We opposed the principle and the practice. Britain insisted on her right. In this dilemma, it was agreed by the treaty, that whenever provisions becoming contraband by the law of nations should

be captured, they should be paid for with a reasonable mercantile profit. This stipulation, without admitting the principle, by securing the American merchants from loss in case of capture, would certainly tend to promote rather than to discourage adventures in provisions to France.

But as this treaty has been the subject of serious complaint on the part of France, it is important to inquire with what foundation the complaint is made.

I might pass over the unworthy insinuations of the minister, that the treaty was entered into by us *in order to ensure advantages to the English, and to furnish our own government with a reply to the claims of France, and pre-emptory motives for refusals to accede to them*; that the *true object of the negotiation was incessantly disguised under specious pretexts, and covered with the veil of dissimulation*. These insinuations have been indiscreetly addressed to the people of the United States. They will gain no belief. It may, however, be useful for you to be truly informed on this subject.

The President's message to the Senate on the 16th of April, 1794, does not declare (as Mr. Adet asserts) "That Mr. Jay was sent to London *only* to obtain a redress of wrongs." The President says, that Mr. Jay's mission would announce to the world "A solicitude for a friendly adjustment of our complaints," and that "going immediately from the United States, such an envoy would carry with him a full knowledge of the existing temper and sensibility of our country: and thus be taught to vindicate our rights with firmness, and to cultivate peace with sincerity." And shall the pursuit of either of these objects be denied to us? What were our complaints? The most urgent regarded the spoliations on our commerce, and the inexecution of the article of the treaty of peace respecting the posts. With the latter was connected the Indian war, with which we had been harassed for so many years; and with the former, the injury or ruin of our merchants, and the consequent extensive damage to agriculture. These being the most prominent objects of the mission, were of course most observable and most talked of; and without them the mission probably would not at that time have been contemplated. But had we no other "complaints?" Did not the impressment of our seamen, like the spoliations on our commerce, excite an universal complaint? Had we

never manifested our uneasiness at Great Britain's avoiding a commercial treaty? Was it not even a subject of complaint and reproach? Was not the inducing her to enter into such a treaty the object of divers measures agitated in Congress? Had not a commercial treaty with Great Britain been earnestly sought for from the conclusion of the war to the time of Mr. Jay's mission? How also could Mr. Jay, after adjusting the primary objects of his mission, better prove the sincerity of our pacifick disposition and more effectually "cultivate peace," than by forming arrangements calculated to extend and protect our trade, to promote good neighbourhood and a friendly and mutually beneficial intercourse; by prescribing a previous demand of justice and satisfaction to hasty reprisals, which naturally lead to war; and by agreeing on other regulations to prevent disputes, or to adjust them when they should arise? All these objects then, and whatever else would be the means of "cultivating peace" were clearly comprehended in the President's message.

But Mr. Adet says, "that Mr. Jay's negotiation was enveloped from its origin in the shadow of mystery." And to whom was our government bound to unveil it? To France, or to her minister—Mr. Adet should answer, or not have complained. And was it for this, to make us a dependence on the French empire, that our alliance was formed? Did we stipulate to submit the exercise of our sovereignty (if it is not a contradiction in terms) to the direction of the government of France? Let the treaty itself furnish the answer. * "The essential and direct end of the present defensive alliance is to maintain effectually the liberty, *sovereignty*, and *independence*, *absolute* and *unlimited*, of the said United States; as well in matters of *government* as of *commerce*." So likewise the treaty of amity and commerce, in its preamble declares, that his most Christian majesty and the United States, willing to fix the rules which ought to be followed relative to the correspondence and commerce which they desire to establish between their respective countries, have taken "for the basis of their agreement, the most perfect *equality* and *reciprocity*—and reserving with all to *each party* the liberty of admitting *at its pleasure* other nations to a participation

* Treaty of Alliance, art. 2

of the same advantages." Corresponding with this declaration in our treaty of amity and commerce with France, is the declaration of the Marquis de Noailles, her ambassador at the court of London, on the 13th of March, 1778, five weeks after the treaty was signed. Some passages in this declaration are so pertinent to the subject in discussion, I shall quote them at length.

"The undersigned, ambassador of his most christian majesty, has received express orders to make the following declaration to the court of London."

"The United States of North America, *who are in full possession of independence*, as pronounced by them on the fourth of July, 1776, having proposed to the king to consolidate by a formal convention, the connection begun to be established between the two nations, the respective plenipotentiaries have signed a treaty of friendship and commerce, designed to serve as a foundation for their mutual good correspondence."

"His majesty being determined to cultivate the good understanding subsisting between France and Great Britain, by every means compatible with his dignity, and the good of his subjects, thinks it necessary to make this proceeding known to the court of London, and to declare, at the same time, that the contracting parties have paid great attention *not to stipulate any exclusive advantages in favour of the French nation, and that the United States have reserved the liberty of treating with every nation whatever upon the same footing of equality and reciprocity.*" Why after all this, do we hear from Mr. Adet the complaint, that the negotiations of the British treaty were secretly conducted? In other words, that in exercising their absolute and unlimited rights of "government and commerce," the United States did not lay open to the French minister or his government the instructions to *our* envoy, for settling *our own* disputes, and *regulating our own commerce* with Great Britain? So far as candour and friendship required, a communication was made to the French minister. He was officially informed, "That Mr. Jay was instructed not to weaken our engagements to France." This instruction was obeyed; Mr. Jay having taken care to insert in the 25th article of the treaty this explicit stipulation, that "nothing in this treaty contained shall be

construed or operate contrary to former and existing public treaties with other sovereigns or states."

The government gave a further proof of its candour and friendship, by communicating to the French minister the *treaty itself*, prior to its ratification, "in order to enable him to make such observations thereon as he might judge proper." These observations you will see in Mr. Adet's letter to the Secretary of State, of June 30, 1795, and the refutation of his objections in the Secretary's answer dated the 6th of July following.

With these facts in view, facts of which the chief are drawn from our treaties with France, and from her own acts and laws, what opinion is to be formed of Mr. Adet's declaration, "that the executive directory regards the treaty of commerce concluded with Great Britain as a violation of the treaty made with France in 1773, and equivalent to a treaty of alliance with Great Britain?"

I will now advert to the charge, "That far from offering the French the succours which friendship might have given without compromising it, the American government, in this respect, violated the letter of treaties."

As far as I can discover, the latter part of this charge is rested wholly on the 17th article of the commercial treaty, which therefore it will be necessary to examine. The stipulations are mutual; but the examination will be simplified by considering their application to France alone. The 17th article then declares—

- 1st. That the ships of war and privateers of France may freely carry the ships and goods *taken from their enemies*, into the ports of the United States, without being obliged to pay any fees to the officers of the admiralty, or any other judges.
- 2d. That such prizes are not to be arrested or seized when they enter the ports of the United States.
- 3d. That the officers of the United States shall not make any examination concerning the lawfulness of such prizes: but,
- 4th. That they may hoist sail at any time, and depart and carry their prizes to the places expressed in their commissions.
- 5th. That, on the contrary, no shelter or refuge shall be given in the ports of the United States, to such as shall have made prize of the subjects, people or pro-

perty of France; but if such shall come in, being forced by stress of weather, or the danger of the sea; all proper means shall be vigorously used that they go out and retire thence as soon as possible.

It will also be convenient here to notice the stipulations contained in the 22d article. These are—

- 1st. That foreign *privateers* not belonging to French subjects or citizens, having commissions from any other prince or state in enmity with France, shall not fit their ships in the ports of the United States.
- 2d. Nor sell their prizes, nor in any other manner exchange their ships, merchandises, or any other lading.
- 3d. Nor purchase victuals, except such as shall be necessary for their going to the nearest port of the prince or state from which they have commissions.

The cases that have occurred in the course of the present war in relation to our treaty with France, particularly the 17th and 22d articles just mentioned, have led to numerous discussions, in which several points have been deliberately settled, either by legislative or executive acts, or by judicial decisions.

The first important executive act was the proclamation of neutrality by the President of the United States. This was issued on the 22d of April, 1793.

At the next meeting of Congress, on the 3d of Dec. 1793, the President laid this proclamation before both houses. The Senate, in their address in answer to the President's speech, thus express their opinion of the proclamation.

“We deem it a measure well-timed and wise; manifesting a watchful solicitude for the welfare of the nation, and calculated to promote it.”

The address of the House of Representatives was *unanimously* agreed to. We read in it this paragraph:—
“The United States having taken no part in the war which had embraced, in Europe, the powers with whom they have the most extensive relations, the maintenance of peace was justly to be regarded as one of the most important duties of the magistrate charged with the faithful execution of the laws. We accordingly witness, with approbation and pleasure, the vigilance with which you have guarded against an interruption of that blessing, by your proclamation, admonishing our citizens of the con-

sequences of illicit or hostile acts towards the belligerent parties ; and promoting, by a declaration of the existing legal state of things, an easier admission of our right to immunities belonging to our situation.

Yet this is the instrument, thus approved by Congress, and whose only object was to caution our citizens to avoid certain acts which would violate the laws of nations, which Mr. Adet has ventured to call “an *insidious* proclamation of neutrality !”

The next executive act noticed by Mr. Adet, is the letter of the 4th of August, 1793, written by the President's command by the Secretary of the Treasury to the collectors of the customs, and accompanied by the rules which the President had adopted for preventing all armaments in favour of any of the belligerent powers. These rules were considered as just and necessary deductions from the laws of neutrality established and received among nations. The letter from the Secretary of the Treasury is explanatory of these rules, and among other instructions, particularly points the collectors to the 17th and 22d articles of our treaty with France ; lest by inattention or misconception of them, she might be injured and her enemies benefitted. The letter concludes with enjoining the collectors to execute those instructions “with vigilance, care, activity and impartiality,” “because omissions would tend to expose the government to injurious imputations and suspicions, and proportionably to commit the good faith and peace of the country.” How could such rules, with such reasons to enforce them, not escape censure ? They were framed and required to be executed with *strict impartiality* ; and consequently were to prevent Frenchmen continuing those aggressions on our sovereignty and neutrality, which had been commenced under Mr. Genet's orders, and which were calculated to involve us in a war with Britain, Spain and Holland ; for at that time these were all combined against France. Frenchmen were to have no other preferences *than those secured to them by treaty*, (except that they were not forbidden to sell their *lawful* prizes in our ports) and our own citizens were to be restrained from committing hostilities under the banners of France, as well as those of other powers.

The third offensive act was the President's *submitting* to Congress these measures, and suggesting the expediency of extending our legal code, giving competent jurisdiction to the courts, and providing adequate penalties to prevent or punish violations of the laws of nations.

The next complaint respects the act of Congress passed on the 5th of June, 1794, "for the punishment of certain crimes against the United States;" being those to which their attention had been called by the President's speech. Mr. Adet asks "what was its result?" And gives himself the following answer. "In consequence of this law, the greater part of the French privateers have been arrested, as well as their prizes; not upon formal depositions, not upon established testimony, not upon a necessary body of proofs, but upon the simple information of the consul of one of the powers at war with the French Republick, frequently upon that of sailors of the enemy powers; sometimes according to the orders of the governours, but often upon the demand of the district attorneys, who assert upon principles avowed by the government, that their conviction was sufficient to authorize them, without complaint or regular information, to cause the privateers to be prosecuted in virtue of the law above mentioned."— And "when the ministers of the Republick have asked for justice of the government, for the vexations experienced by the privateers, in contempt of the 17th article of the treaty, they have *never* been able to obtain satisfaction."

Judging only by these declarations of Mr. Adet, a stranger would imagine there had been a combination of the general and state governments and of our courts, to harass and do injustice to Frenchmen engaged in privateering. But our own citizens place a different estimate on this impeachment of their President, their senators and representatives in Congress, their judges and other publick officers: and an examination of the cases cited by Mr. Adet to support his assertions will manifest their incorrectness.

First case. The French privateer *Sans Pareil* and her prize the *Perseverance*.

On the 26th August, 1794, Mr. Fauchet complained that the prize had been seized on the pretext that the *Sans Pareil* had been illegally armed in the United States.

The answer of September 3d, from the Secretary of State, which Mr. Adet censures "as indicative of delay," assured him that the Secretary had urged the governor of Rhode Island, where the prize was carried, to report the circumstances of the case without delay. On the 27th of Sept. the secretary informed Mr. Fauchet, that the governor had decided that the prize should be restored. On the 17th of Oct. Mr. Fauchet renewed his complaint, for on the suit of the claimant the prize had again been arrested by process from the district court. The Secretary of State answered on the 22d, with information that ought to have satisfied Mr. Fauchet. For admitting that agreeably to the law of the 5th of June, 1794, the courts had authority, and were bound in duty to take cognizance of captures made within the jurisdiction of the United States, or by privateers illegally fitted in their ports (the right of doing which Mr. Fauchet did not contest) they could not refuse it in the case of the prize of the *Sans Pareil*: the guard against vexatious prosecutions being the judgment for cost and damages to which an unjust prosecutor is exposed. The circular letter written on this occasion to the governors of the states manifests the solicitude of our government to prevent vexatious suits.

2d Case. Glass and Gibbs.

By the copy of the proceedings in the supreme court of the United States, in this case, you will see that the court did not, as stated by Mr. Adet, determine "that the tribunals could decide whether a prize belonged to enemies or to neutrals." The question before the court was of the cognizance of a captured vessel and cargo, the former the property of a Swede and the latter belonging partly to some Swedes, and partly to a citizen of the United States. The opinion therefore pronounced by the supreme court applied to the case in which one of the claimants was a citizen of the United States. And after solemn argument, the court decided, "that the district court of Maryland had jurisdiction, and should accordingly proceed to determine upon this case agreeably to law and right."

I will add only one more remark—That the 17th article, the letter of which we are charged with violating, in suffering our courts to take cognizance of French prizes, expressly refers to "the ships and goods taken from their enemies;" and it is the "examination concerning the law

fulness of *such prizes*" which the article forbids. But no examination of such prizes has been attempted by our government or tribunals, unless on clear evidence, or reasonable presumption, that the captures were made in circumstances which amounted to a violation of our sovereignty and territorial rights.

3d Case. The French privateer *L'Ami de la Point a Petre*, captain William Talbot, and her Dutch prize the *Vrouw Christina Magdalena*.

To the information contained in the papers collected in this case I have to add, that this cause was finally decided in the supreme court in August term, 1795. The court were unanimously of opinion, that in the particular circumstances of Talbot's case, notwithstanding his French commission, and his taking an oath of allegiance to the French Republick, he continued to be a citizen of the United States. But the cause, as I am informed, did not appear to have turned on this point. Talbot had associated with one Ballard, commanding an armed vessel called the *Ami de la Liberté*, which had been fitted out in the United States, and had no commission. Talbot and Ballard cruised together as consorts; and in fact it was Ballard's vessel that took the prize; Talbot not coming up till an hour after the capture. Ballard was afterwards tried, before the circuit court, for piracy.

The court were also of opinion, from the tenour of the evidence, that Talbot's vessel was owned by citizens of the United States, to whom the prize money would eventually find its way in case of restitution to the captors.

Ballard and Talbot were both citizens of Virginia. The attempt of the latter to become a French citizen, was considered to be fraudulent, being made for the sole purpose of obtaining a commission, under colour of which he might plunder the subjects of nations with whom the United States were at peace.

An observation ought not to be omitted here, That although the captors, Talbot and others, had been defeated both in the district and circuit courts, yet they carried the cause up to the supreme court: thus using the legal right of appealing to the court in the last resort; a right which alike exercised by the subjects of powers who were enemies to France, has formed a principal subject of Mr. Fauchet's and Mr. Adet's continued complaints.

4th. Under the head of complaints for vexatious prosecutions, Mr. Adet mentions only two cases in which damages and interest were allowed to the French captors, viz. one of *la nuestra Senora del Carmen*, at Rhode Island, and the other of *la Princessa des Asturias* at New York. "Yet (says he) the tribunals have *always* allowed damages to the captured, when they have declared the prizes illegal." How far the facts will warrant this last assertion, I am not possessed of documents to determine. I presume it is to be understood in a *general* sense only, and to admit of exceptions. And in this sense there will be no difficulty in admitting the truth of the assertion, and accounting for it. The captures here referred to, were made either within our jurisdictional line, or by *illegal privateers*, being such as were equipped in whole or in part, in the ports of the United States. Of these material facts the captors could not be ignorant; consequently they could have no apology for defending their unjust claims in our courts; and of course, were justly condemned in costs and damages.

In the case of the prizes of the privateer the *Citizen of Mersailles*, damages were claimed by the captors, but denied. For those prizes had been considered in the district court to be illegal. And although the sentence of that court was reversed in the circuit court, yet it was upon the introduction of *new testimony*, on the part of the captors. This last decision was affirmed in the supreme court, yet without damages: inasmuch as the testimony was considered to be so ambiguous as to justify the appeal.

The same remarks apply to the prizes of the privateer *General Laveaux*; with this addition, that one of the judges dissented from the opinion of the court, being firmly of opinion that this privateer was covered American property.

The privateer *la Parisienne* had been registered as an *American coasting vessel*, under the name of the *Hawk*. During the embargo, in the spring of 1794, she slipped out of Charleston, and went to Port de Paix; where she was sold to one Blochos, a Frenchman, who armed her and provided her with a commission. Having afterwards arrived at Charleston, she was recognised and prosecuted for a breach of the revenue laws, *in having gone to a foreign port* whilst she was in the legal predicament of a *coaster*.

The district court condemned her : but on the application of Blochos to have her restored on paying the appraised value, the judge permitted him to take her, *in a state of war-like equipment*. Shortly afterwards she put to sea, and captured two valuable British prizes, the brigantine Caesar and Favourite. On their arrival, the one at Charleston, the other at Savannah, suits were commenced to obtain their restitution, as having been captured by an illegal privateer. The decrees of the courts were in favour of the captors, but without damages. The supreme court disapproved of the restitution of the privateer without dismantling her : and considered the mistake committed in this respect a sufficient reason to cover the party prosecuting from the payment of damages.

All the other cases of captures by French privateers, which have been brought up to the supreme court, were decided at last August term. In some of them, the circumstances would not have warranted an award of damages, in others *the counsel for the captors omitted to ask for them*. When demanded, you know that it is in the discretion of the court to grant or refuse them : this discretion being regulated by all the circumstances of each case. Hence when a party is drawn before the court without good cause and vexatiously, damages are always given ; but are denied when there appears a reasonable cause of controversy.

5th. Mr. Adet having briefly noticed several cases by name, seems to reserve those of the Vengeance and the Casius for a full display of unwarrantable conduct in the government and courts of the United States, and therefore descants on them at some length ; but with so many aberrations from the facts, with so many erroneous ideas concerning our jurisprudence, and so many injurious insinuations respecting our courts and their officers, it will be necessary that you should learn the true history of these cases from authentick documents.

Case of the French Privateer la Vengeance.

For the full history of this privateer and her prize, I must refer you to the documents in the case. The principal facts are these. About the latter end of June, or beginning of July, 1795, the privateer *la Vengeance* arrived at New York with a valuable Spanish prize called the *Princessa de las Asturias*. Don Diego Pintado, the owner, commenced a suit for his vessel, on the ground that she

had been taken by an illegal privateer. The suit was instituted by Mr. Troup, not wantonly but upon information which was afterwards verified by the oaths of several witnesses. In the progress of the cause these witnesses were contradicted by the witnesses produced on behalf of the captors, for whom a decree was finally given : The clashing evidence preponderating, in the judge's opinion, in favour of the captors ; but he expressly declared that there was probable cause for the seizure.

After this suit for the prize had been commenced, the Spanish consul complained to Mr. Harrison, the district attorney, in his official capacity, of a violation of law, on the part of the privateer *la Vengeance*, in consequence of which a Spanish subject had been injured. Mr. Harrison upon an inquiry found at least a probability that the complaint respecting the privateer was true. This probability arose from what he considered as affording the certainty of *material proof* ; and, therefore, in conformity with his official duty, commenced a prosecution on the act of Congress forbidding the arming of privateers in our ports. The decision of this and of the prize cause depended on the same evidence. The decision being in favour of the captors, Mr. Harrison acquiesced in it as it respected the privateer : and he united with his associate counsel in the prize cause in advising the like submission in that case. But the Spanish consul deemed it his duty to pursue the claim to the court in the last resort. This can warrant no complaint ; for Mr. Harrison remarks, that perhaps there never were causes in which more contradictory and irreconcilable evidence was offered, and in which the minds of the auditors were more divided as to the real state of facts.

The second publick suit against the privateer, was for exporting arms and ammunition from the United States, when such exportation was prohibited by law. The evidence which appeared in the other causes gave rise to this prosecution ; and upon the trial the judge condemned the privateer. An appeal from this sentence was interposed by the French consul. The appeal was heard in the circuit court, and upon *new evidence* the sentence of the district court was reversed.

Mr. Adet complains, that while one suit was pending for the prize, and another against the privateer, the district attorney should exhibit a second information against the

privateer, on which she was arrested anew, for having exported arms in violation of a law of the United States, which was in force when the Vengeance sailed from New York: and that this information was filed on the simple declaration of Mr. Giles, the marshal of the court, who as informer, was to share part of the confiscation. As Mr. Harrison remarks it was in favour of the privateer that this second information was filed, *while the first was pending*, because it saved time. Had he postponed the latter until the first had been decided, there might have been some foundation for a charge of unnecessary delay. Mr. Harrison's state of the case shows that this second information was not made on the declaration of the marshal; but on the evidence that appeared on the examination of the first.

Mr. Adet having been pleased to censure the conduct of the attorney, clerk, and marshal of the district court of New York: in justice to them, I have added to the other documents in this case, the letters of Mr. Harrison and Mr. Troup. They will answer the double purpose of justifying them and of vindicating our government and tribunals.

Mr. Adet particularly notices the papers he had received from St. Domingo. "proving," as he says, "in the most convincing manner, that the Vengeur (la Vengeance) had arrived at Port de Paix without any armament or equipment whatever; and that she had been sold, armed and equipped wholly, and commissioned as a privateer, on the territory of the Republick. These documents were certificates of the general, the ordonnateur, and of the greater part of the principal officers of St. Domingo, &c. He hastened to communicate them to the Secretary of State, and to request him to order the attorney of New York district to stay the proceedings instituted in the name of the government: there was nothing done with them and Mr. Harrison continued his prosecution." It will appear by my letter of October 1, 1795, to Mr. Harrison, that these papers were sent to him, and by his answer of October 3d, that he received them. That the bill of sale (one of the papers) was produced to the court, in behalf of the claimant of the privateer; but that the certificate of general Leveaux could not be considered as evidence in the cause; and if it had been admissible. "the claimant

would be very cautious of producing it, *on account of its differing from the witnesses.*"

Sixth. Case of the French privateer le Casius.

For the full history of this case, I must also refer you to the documents ; and here only present you with a concise statement.

The Casius, under the name of les Jumeaux, was fitted and armed for a vessel of war in the port of Philadelphia, in violation of a law of the United States. In December, 1794, having escaped from the port to descend the river, orders were given to the militia of the state of Delaware to intercept her. The attempt was made and failed—the crew of les Jumeaux which was unexpectedly found to be very numerous, resisted the officers who went on board, manned their cannon, and brought them to bear on the cutter in which the militia (about forty in number) were embarked. Their force being inadequate to the enterprise, they retired, with an intention to return the next day with a reinforcement. They did so ; but les Jumeaux had sailed and gone to sea. The agent Mr. Guenet, by whom les Jumeaux had been fitted out, was tried in the circuit court at Philadelphia, convicted of the offence, and received sentence of fine and imprisonment.

Les Jumeaux proceeded to St. Domingo. Samuel B. Davis, a citizen of the United States, there took the command of her, with a commission from the French government. Davis probably sailed from Philadelphia in les Jumeaux for the purpose of finally taking the command of her. Her name was now changed to le Casius ; and on a cruise she took a schooner called the William Lindsay, belonging to Messrs. Yard and Ketland of Philadelphia : Mr. Ketland having purchased an interest in her after her sailing. The schooner and her cargo were condemned as prize at St. Domingo. In August, 1795, captain Davis, commanding le Casius, came with her to Philadelphia. She was immediately known. Mr. Yard, with a view of obtaining an indemnification for the loss of the schooner and her cargo, libelled le Casius in the district court, and caused the captain to be arrested. Soon after, the supreme court being in session, captain Davis's counsel applied for and obtained a prohibition to the district court, to stop its proceeding ; by which the suits both against him and le Casius were defeated. The prohibition was

granted on this principle; that the trial of prizes, taken without the jurisdiction of the United States, and carried into places within the jurisdiction of France, for adjudication, by French vessels, and all questions incidental to it, belong exclusively to the French tribunals: and consequently that its vessels of war and their officers, are not liable to the process of our courts, predicated upon such capture and subsequent proceeding within the jurisdiction of the French government.

Messrs. Yard and Ketland having failed to obtain indemnification in this mode, procured new process on the information of Mr. Ketland, to be issued from the circuit court, by which *le Casius* was attached as a vessel armed and equipped as a ship of war in the port of Philadelphia, with intent to cruise and commit hostilities against nations with whom the United States were at peace; in violation of the act of Congress prohibiting such armaments. Mr. Adet complained that the process was taken out of the circuit court; because as he alleged, it had no jurisdiction, and that it would be attended with delay, that court sitting but twice a year: whereas the district court, in which it was said the prosecution (if at all permitted) should have been commenced, was always open. I consulted gentlemen of legal knowledge, on the point of jurisdiction in this case, and they were decided in their opinion, that the circuit court had jurisdiction, and exclusively of the district court. You will see also in Mr. Rawle's statement of this case, that this opinion was adopted and supported by two gentlemen of eminence at the bar: you will farther see in that statement, that the government of the United States had no part in originating this prosecution; and that the district attorney, in behalf of the United States, took measures at each term of the circuit court, to prepare the cause for trial, and on a plea calculated to defeat the prosecution. At length, in October term, 1796, the cause was brought to a hearing. In the course of the argument, the question of jurisdiction presented itself. The court adjourned until next day to consider of it, and on the following morning dismissed the suit. As soon as I had received notice of this event, (on the 19th of October last) I wrote to Mr. Adet, informing him that *le Casius* remained in the custody of the marshal, but ready to be delivered to his order. To this no

answer was returned ; but he mentions the matter, in the notes subjoined to his note of the 15th November, intimating that the United States were answerable in this case, for a violation of treaties, and for the damages the *Casius* had sustained. Here the affair rests.

In his letter of the third of June, 1796, which you will find among the papers, respecting the *Casius*, Mr. Adet mentioned the affair of the *Favourite* at New York ; and intimated an idea that the Executive might in like manner cause the prosecution against *le Casius* to cease. But the proceedings in the case of the *Favourite* were wholly in the hands of the executive officers, who were under the President's immediate control, and to whom, on evidence satisfactory to the Executive, orders were given to discontinue the process. In this affair of the *Favourite*, we are fortunate in finding one case in which Mr. Adet (contrary to his assertion, in his note of November 15th) acknowledges, that justice was done by our government. You will observe in Mr. Fauchet's letter of the 23d of September, 1794, a very formidable complaint, in this affair of the *Favourite* ; that it was pretended, that a privateer fitted for a cruise had deposited arms on board her, and that this pretext was used for visiting and pillaging her : that she was a ship of war of the Republick, then serving as a store ship until she could be repaired : that the sovereignty of France was violated, and her flag insulted.—Yet by the letter of John Lamb, Esq. collector of the port of New York, of the twenty-second of November, 1794, you will see, that at the time the seizure was made, of the suspected articles on board the *Favourite*, “ she having been totally dismantled, her crew sent on board other ships of war, and her sails, rigging and other materials sold at publick auction, she was considered as a *hulk* ; otherwise the event would not have taken place.” The collector further declares that the charge of pulling down the national flag and hoisting another in its place was groundless.

These are all the cases expressly mentioned by Mr. Adet, in which French privateers and their prizes have been brought under the cognizance of our courts of justice ; and all, therefore, to which an answer can be directed. Had he cited the other cases, which he says would fill a volume, we have no doubt there would be found in

them, as in those which have been mentioned, abundant reason to justify the government and the tribunals.

Mr. Adet's complaints are not confined to imputations of injustice experienced by French privateers and their prizes from our courts.

First, "He protests against the violation of the 17th article of the treaty, in contempt of which the American tribunals, *have taken cognizance* of the validity of prizes made by French ships of war or privateers, under pretext of original armament or augmentation of armament in the United States, or of capture within their line of jurisdiction." But his predecessor Mr. Fauchet,* after saying that our admiralty courts interfered in prize cases on the ground of "seizure within the jurisdictional line of the United States, or of armament or augmentation of armament of the capturing vessels in their ports," immediately adds, "on this subject, sir, you request me to specify to you a circumstance in which a prize was arrested, which did not come under that denomination, and you take the trouble to establish, that they have a right to intervene in every case that can be brought under those heads. In the first place, sir, *I never have, at least to my recollection, contested the right of your courts, or of the government, to interfere in matters of the nature of those you mention* : but I complain of the facility with which prizes have been thrown into those two classes, which do not belong to them." He then says that he could cite a great number of affairs to which he alludes ; but contents himself with mentioning only two. The first is the case of Talbot, of which I have already given some details, and which, with the documents referred to, will show this to have been an unfortunate instance to support his complaint. The other is that of the prizes of the Citizen of Marseilles, also already mentioned, and which will not justify a complaint ; for although the final decision, was in favour of the privateer, yet the sentence of the district court was not reversed in the circuit court, but upon the introduction of *new testimony* ; and the supreme court allowed no damages, because the testimony was so ambiguous, as to justify the appeal.

But quitting the contradictory declarations of the French ministers ; and referring you to the letter dated August

* Letter June 3th, 1795.

16th, 1793, from the Secretary of State to our minister at Paris, (which has been published,*) for the reasoning of our government on this subject, and the demonstration of their right and duty as a neutral power, to prohibit any of the belligerent powers arming their vessels in our ports, consequently to restore to their proper owners, prizes taken and brought in by vessels so unlawfully armed, or when taken within our line of jurisdiction, I will only add here—That the principle of the rules on this subject, first adopted by the President on the most mature deliberation, received afterwards the sanction of Congress, by their act of the 5th June, 1794, and of the judges in all their judicial proceedings, in the prize causes in question. If then the 17th article of the French treaty has been violated, the executive, the legislature and the judges of the federal courts, have all deliberately concurred in the violation. This no American citizen will be inclined to believe; and we might suppose, that the consideration of such concurrence in one opinion would any where produce a pause, and some diffidence in pronouncing it erroneous. Neither the rules adopted by the President, nor the act of Congress, have made a new law respecting such prizes: they have only directed the *modes of proceeding to fulfil our neutral duties, agreeably to the universal law of nations.* The judges have applied this law; but not without due attention to the obligations of our treaties, which they regard as supreme laws of the land.

Second, Mr. Adet "protests against the violation of the 17th article of the treaty, in contempt of which, English vessels, which had made prize on Frenchmen, have been admitted into the ports of the United States." The construction of this part of the 17th article, for which Mr. Adet, after his predecessor Mr. Fauchet, contends, is this—That if a national ship of war, of the enemies of France has *at any time, and in any part of the globe*, made prize of a French vessel, such ship of war is to be allowed no shelter or refuge in our ports—unless she is driven in through stress of weather; and then she is to be made to depart as soon as possible. On the contrary, the construction adopted by the Executive of the United States, and expressed in the rules before mentioned, which had been transmitted to

* State Papers, vol. i. p. 137.

the collectors in August, 1793, was this—That *privateers* only of the enemies of France were absolutely excluded from our ports, except as before when compelled to enter through stress of weather, pursuant to the twenty-second article of the treaty; while the *national* ships of war of *any other nation* were entitled to an asylum in our ports, excepting those which should have made prize of the people or property of France, *coming in with their prizes*.

On the 9th of September, 1793, the Secretary of State, thus expressed to the British minister the determination of the executive—“*The publick ships of war* of both nations, (French and English) enjoy a perfect equality in our ports.—First, In cases of urgent necessity—Second, In cases of comfort and convenience—and, Third, In the time they choose to continue—and though the admission of *prizes* and *privateers* of *France* is *exclusive*, yet it is the effect of treaty, &c.”*

In support of our construction of the treaty, it has been observed, That, † “the first part of the seventeenth article, relates to French ships of war and privateers entering our ports *with their prizes*: the second contrasts the situation of the enemies of France, by forbidding such as shall have made prize of the French: intimating from this connection of the two clauses, that those forbidden, are those which bring their prizes with them.” To these observations I will add,—That if the *literal* construction contended for by the French ministers were admitted, then although the *publick* ships of war which *had* made prize of French people or property would be excluded from our ports, yet the *prizes* of such *publick* ships might be received, and they might be *sold* too; for the prohibition in the twenty-second article of the treaty, applies only to *privateers* and *their prizes*; while the government of the United States judged that the seventeenth article was intended to exclude the *prizes* made on the French, by *publick* ships of war as well as those made by *privateers*; and gave directions accordingly to have them excluded. Further, if it had been intended to exclude from our ports the *publick ships of war* of the enemies of France, coming *without any prize*, then they would doubtless have been compre-

* State Papers, vol. i. p. 169.

† Secretary of State to Mr. Fauchet, September 7, 1794.

hended in one provision with the *privateers* in the 22d article ; for *privateers* are thereby excluded, whether they come with or without prizes. But *publick ships of war* are not comprehended, or at all referred to in the twenty-second article ; whence the conclusion is fair, that it was not intended to forbid them coming *alone* ; and consequently, that the *exclusion* provided in the 17th article applies to them *only* when they would come into our ports *with their prizes* ; this last clause of the same article being in its form opposed to the first clause, which *admits* the entrance of French ships *with their prizes*. Besides if a *publick ship of war* of the enemies of France comes into our ports *without any prize*, how is it to be known whether she has or has not made prize of the people or property of the French ? Who is to erect a tribunal to investigate and pronounce on the fact ? But if she comes *with a prize*, the case presents no difficulty ; she brings with her the evidence which goes to the exclusion of her and her prize.

I must now advert to some others of Mr. Adet's charges against the government of the United States. First, "It (the government of the United States) put in question, whether it should execute the treaties, or receive the agents of the rebel and proscribed princes." And is there any thing in this unjustifiable or extraordinary ? Was it easy for a nation distant as ours, to obtain promptly such accurate information as would enable it duly to estimate the varying condition of France ? In 1791, the constitution formed by the constituent assembly was accepted by Louis XVI. ; it was notified to the United States in March, 1792. Congress desired the President to communicate to the king of the French, their congratulations on the occasion. In August, 1792, the king was suspended. In September, royalty was abolished ; and in January, 1793, Louis XVI. tried and condemned by the convention, suffered death. Was it easy to keep pace with the rapid succession of such revolutionary events ? And was it unlawful for our government, under such circumstances, even to *deliberate* ? I do not find that information of the death of the king was received from our minister at Paris, until May 1, 1793. The news, however, had previously arrived, in such a manner as to attract the attention of government, for in April the President had determined to receive a minister from the French Republick. And it is remarkable, that

this was before he knew that a minister had arrived in the United States. This promptitude in deciding a leading question, does not bear any strong marks of hesitation. And was there no merit in this ready determination to acknowledge the French Republic? Had it been before acknowledged by any power on the globe? How long did *France hesitate* to acknowledge the Republic of the United States? A year and an half. And under what circumstances was the acknowledgment finally made? After the capture of a whole British army appeared to have established our independence. But of this more hereafter. In matters of importance, (and what could be more important than the decision of a neutral and allied nation on questions perhaps involving war or peace?) Is it the part of wisdom to reject all deliberation, even on points which do not obviously present difficulties? Will not prudence dictate to him who is to decide great national questions, rather to deliberate long than risk the consequences of hasty decisions?

Second, "It made an insidious proclamation of neutrality."

I have already remarked, that this proclamation received the pointed approbation of Congress; and I might truly add, of the great body of the citizens of the United States. And what was the general object of this proclamation? to preserve us in a state of *peace*. And have not the ministers of France declared that their government did not desire us to enter into the war? And how was peace to be preserved? By an impartial neutrality. And was it not then the duty of the chief Executive to proclaim this to our citizens, and to inform them what acts would be deemed departures from their neutral duties? This was done by the proclamation. It declared it to be the duty, interest and disposition of the United States, to adopt and pursue a conduct friendly and impartial toward the belligerent powers: it warned the citizens to avoid all acts which might contravene that disposition: it declared that whosoever of the citizens should render himself liable to punishment or forfeiture under the law of nations, by committing or abetting hostilities against any of those powers, or by carrying to any of them articles deemed contraband of war, would not receive the protection of the United States against such punishment and forfeiture: and that

the President had given instructions to the proper officers to prosecute all persons who should violate the law of nations with respect to the powers at war, or any of them. To what in all this can the epithet *insidious* be applied? On the contrary, is not the whole transaction stamped with *candour* and *good faith*?

Third, "By its *chicaneries*, it abandoned French privateers to its courts of justice." *Abandoned them to its courts of justice!* Sir, you know many of the judges personally, and all of them by reputation, and that their characters need no vindication from such an insinuation. They are judges with whose administration of justice our own citizens are satisfied; and we believe they may challenge the world to furnish a proof that they have not administered justice with equal impartiality to foreigners. I will only add here one remark, that the correspondences with the French ministers formerly published, joined to those now furnished you, with the other documents accompanying them, will show how loudly they can complain of the proceedings in our courts, and at the same time with how little justice.

Fourth, "It eluded the amicable mediation of the Republick for breaking the chains of its citizens at Algiers." We did not entertain any doubt of the friendly disposition of the French Republick to aid us in this business. But what was really done we have never known. You will find herewith Mr. Fauchet's letter of June 4, 1794, and the answer of the Secretary of State on the 6th, to which Mr. Adet refers. The information on the subject which Mr. Fauchet expected "in a little time from Europe," probably never arrived: at least it was never communicated to our government. There is surely in the Secretary's answer no evidence that our government were unwilling to accept the mediation of the Republick. On the contrary, we have relied upon it to aid our negotiations with the Barbary powers. Accordingly, when colonel Humphreys went from hence in 1795, clothed with powers for negotiating peace with those states, he was particularly instructed to solicit the mediation of the French Republick; and for that purpose only he went from Lisbon to Paris, where, through our minister, the committee of publick safety manifested their disposition to contribute to the success of his mission. But colonel Humphreys was at

the same time authorized to depute Joseph Donaldson, Esq. (who had been appointed consul of the United States for Tunis and Tripoli, and who went with Col. Humphreys from America) to negotiate immediately a treaty with Algiers: for in a country where a negotiation depended on so many contingencies, it was of the last importance to be ready to seize the favourable moment to effect a peace, whenever it should offer. Such a moment presented on Mr. Donaldson's arrival at Algiers. He had not been there forty-eight hours before the treaty was concluded. It is also a fact, that it was effected without the aid of the French consul at that place. However, with respect to Mr. Donaldson's negotiation, we are well informed that "his not conferring with the consul of France was not his fault; and if he had done it, that it would have injured his cause: neither the Republick nor her consul enjoying any credit with the dey." But we are at the same time informed, that the cause of this was transitory, and ought not to hinder us from endeavouring to engage her interest for other places, and in that place for future occasions. Agreeably to this idea, the agent for the United States applied to the French consul, Herculaïs, at Algiers, the last spring, to recommend a suitable person to negotiate a treaty with Tunis. The person recommended was employed, and we have been informed, had in part succeeded, and was expected to complete a treaty of peace. This information was communicated to our minister at Paris in a letter dated 30th of August last, from the French minister for foreign affairs, accompanied by an extract of a letter from the consul Herculaïs.

In all these transactions, far from discovering a trace of evidence to support Mr. Adet's charge, the reverse is manifestly proved.

Fifth, "Notwithstanding treaty stipulations, it allowed to be arrested vessels of the state."

While we admit the fact that French vessels have been arrested, we deny that the arrests have infringed any treaty stipulations. The details in this letter and the documents referred to, appear to us entirely to exculpate the government. And if neither the Executive nor our tribunals could in any case take cognizance of captures which the French privateers called *prizes*, then they might take our own vessels in our rivers and harbours, and our citizens

be without redress. But * “It is an essential attribute of the jurisdiction of every country, to preserve peace, to punish acts in breach of it, and to restore property taken by force within its limits. Were the armed vessel of any nation to cut away one of our own from the wharves of Philadelphia, and to choose to call it a prize, would this exclude us from the right of redressing the wrong? Were it the vessel of another nation, are we not equally bound to protect it, while within our limits? Were it seized in any other waters, or on the shores of the United States, the right of redressing is still the same; and humble indeed would be our condition, were we obliged to depend for that on the will of a foreign consul, or on negotiation with diplomattick agents.”

The same reasoning will apply to captures made by illegal privateers; that is, by such as were armed and equipped in the ports of the United States; for it being by the law of nations the right of our government, and as a neutral power its duty, to prevent such armaments, it must also be its right and duty, by all means in its power, to restrain the acts of such armaments done in violation of its rights and in defiance of its authority. And such were the armaments made by the French people in the ports of the United States. And the most effectual means of defeating their unlawful practices was the seizing of their prizes when brought within our jurisdiction. It is very possible, indeed, that in some cases the irritated subjects or publick agents of nations whose property was taken by French privateers, might commence vexatious prosecutions: but this is no more than happens frequently among our own citizens; and in every nation in the world: and the only restraints on the vindictive passions of men, in such cases, which the policy of free governments has imposed, are the damages which the courts compel the malicious prosecutor to pay to the injured party. If, as Mr. Adet asserts, damages have in two cases only been granted by the courts to French privateers, even when the decisions have been in their favour, it has arisen from their own conduct; or the omission of their counsel, or from accidental circumstances, which in the opinion of the courts furnished reasonable presumptions against them of

* Letter from the Secretary of State to Mr. Morris, Aug. 16, 1793. State Papers, vol. i. p. 137.

having violated the laws, either by illegally arming in our ports, or making the captures within our jurisdiction. If, on the other hand, they have, in the event of contrary decisions been always condemned to pay damages, we may venture to say, it was because they were always in the wrong. For no one will find sufficient ground to impeach the discernment or integrity of our courts.

Sixth. "It suffered England, by insulting its neutrality, to interrupt its commerce with France."

That our commerce has been interrupted by the armed vessels of England, and sometimes with circumstances of insult, we certainly shall not attempt to deny: the universal resentment and indignation excited by those injuries were admissions of the fact; but that the government has *connived* at the practice, (for that Mr. Adet, must have intended to insinuate by the word "suffered,") all its acts most forcibly contradict. It was because of those aggressions that preparations for war were commenced; and to demand satisfaction for them was the leading object of Mr. Jay's mission to London. Satisfaction was demanded; and the arrangements agreed on for rendering it, are now in execution at London. But if by "suffered," Mr. Adet means that we did not arm, that is, make war on England, to obtain the indemnification, when humanity, reason, and the law of nations prescribed the mode of previous peaceable demand—to these very principles we may appeal for our justification: and if it is necessary to go further, we say, that as an independent nation, we must be left to determine in what manner we can most beneficially obviate an evil, and when it is most proper for us to repel an injury. To deny us this right of judgment is to deny our independence. We have not been insensible either to our honour or our interest. If we have manifested much long suffering, we have not been singular. Neutral nations very commonly endure many temporary evils; because these appear light when compared with the calamities of war: and they look forward, as we have done, to a period when returning justice may redress their wrongs. This period we trust will arrive in regard to those we are now suffering from the French Republick. If a nation, not bound to us by treaty, and between whom and ourselves actual circumstances and many recollections

tended to excite peculiar passions, engaged to render us justice, shall we expect less of an avowed friend?

We may here properly inquire, what could have been the understanding of the parties on this point, when the treaty of 1778 was made between France and the United States. She knew that notwithstanding the extent of our country, and its rapid increase in population, many years must elapse before we could form a powerful navy to protect our commerce. She knew the conduct of maritime powers in all their wars; particularly she was acquainted with the maxims and measures of England, towards the commerce of neutral nations, in all her wars with France. And if knowing these things, France then expected that in all subsequent wars, we should *compel* the maritime powers in general, and Great Britain in particular, to admit our commerce to perfect freedom, then instead of a treaty of *commerce* containing regulations for conducting it, when France should be at war, she would have demanded from us a stipulation, that in every future war in which she should be engaged with any other maritime power, we also should engage in it as her associate. But this is a condition which France was too just to demand, and to which the United States would never have agreed.

Seventh, "Notwithstanding the faith of treaties, it gave an asylum to these same English, who after having insulted her flag, pillaged her citizens, came also to brave the American people in their ports, and to take a station whence to cruise, on a favourable opportunity, against the French."

This like most others of Mr. Adet's charges, is but the renewal of the complaints of his predecessor, Mr. Fauchet; and the vindication of the government will appear in the answers and communications from the Secretary of State to that minister, in the years 1794, and 1795. The cases particularly noticed, were those of the British frigate *Terpsichore* and her prize *la Montague*; and of the British ship *Argonaut* and her prize *l'Esperance*. The *Thetis* and *Hussar* British frigates, with their French prizes *la Prevoyance* and *la Raison*, are also mentioned, but without any facts or circumstances as subjects of inquiry, which of course is precluded. That of the *Terpsichore* and her prize appears to have been the first case of the kind, in which the Executive of the United States and

those of the particular states were called to interfere ; and therefore, it will not be thought extraordinary, if the executive of Virginia was unprepared with arrangements to give instant effect to the stipulation of the 17th article of the treaty of 1778, forbidding an asylum to armed vessels of the enemies of France and their prizes. What delay took place seems to have been the result of accident ; certainly not of design. And by letters from this department, the executives were earnestly pressed to take the necessary order for prompt execution, in future, of this part of the treaty. But why should the French ministers complain with such energy, that a British ship of war, with her prize, remained in one of our ports, during perhaps twenty or five and twenty days ; when against the earnest requests and orders of the Executive, the French privateers, armed in our ports in violation of the laws, long continued to keep on our coast and enter our harbours, thence on favourable opportunities to cruise against their enemies ? The Columbia, or Carmagnole, continued such her unlawful acts for more than a year.

After all the zealous remonstrances of Mr. Fauchet, now renewed by Mr. Adet, about the captures of the French corvette l'Esperance, by the British ship Argonaut, who went with her prize into Lynnhaven bay, what were the facts ? The governour of Virginia went personally to the French consul at Norfolk, for information concerning this declared violation of the treaty—but “ received none which appeared to justify the uneasiness occasioned by that event, *he charging no circumstance as improper in the captors* ; but rather seemed to consider the introduction of the prisoners made on that occasion, so soon into a place where the exchange would be effected, as an alleviation of the misfortune of losing the vessel.”

The captain of the French corvette himself was desired to give evidence in the case ; he promised, but failed to appear. He was called upon a second time to give information, but discovered an unwillingness to do it ; observing that he had given to the consul a circumstantial account of the transaction on his arrival. The governour having heard that a respectable pilot by the name of Butler was acquainted with the circumstances of this affair, he directed his deposition to be taken ; it was taken, and imported, that admiral Murray himself purchased the prize

l'Esperance, and manned and fitted her in Lynnhaven bay for a cruise. But Butler's deposition was afterwards taken on the part of the British, in which he contradicted all the material facts recited in the former deposition; for which he accounted by saying, that he could neither write nor read, and that there had been inserted in his first deposition what he had never said. Under these circumstances it was desirable to obtain further information. This was furnished by the British minister, in the extract of a letter from admiral Murray, which bears every mark of candour and humanity, and of respect for the United States. It is as follows. "The French sloop of war *l'Esperance* was brought into Lynnhaven bay on the 11th of January (a few days after my arrival there) by captain Ball, who had captured her fifteen leagues from the shore: the weather being very tempestuous, a lieutenant with a sufficient number of men only to navigate her (not being half the complement the French had in her) were sent on board from the *Resolution* and *Argonaut*; and so soon as the weather permitted those ships to supply her with water and provisions, I sent her to sea, that I might give no umbrage to the American States. An additional reason for bringing *l'Esperance* into Lynnhaven bay, was out of humanity to the French prisoners, whom, having had a long voyage, I sent to Norfolk as soon as prudence would permit: otherwise they must have been kept prisoners on board the whole winter, and sent to Halifax in the spring: nor was she equipped or armed then, in any manner whatever; nor did the lieutenant receive any commission for her whilst in Lynnhaven bay; and when at sea only an acting order to command her, which is customary, and absolutely necessary in all captures; otherwise if retaken by the enemy, he might be considered as a pirate."

Eighth. "It might be said that it applauded their (the English) audacity; all submission to their will; it allowed the French colonies to be declared in a state of blockade, and its citizens interdicted the right of trading to them."

If among the multitude of such complaints as Mr. Adet has exhibited, any one could excite surprise, this charge is calculated to produce it. Here a formal charge is made against the government of the United States, that it did not control in another independent nation the right of judging

of its own affairs—that it did not forbid and effectually prevent the officers of a foreign power, the British admirals and commanders in the West Indies, declaring certain French colonists to be in a state of blockade! “But the official legalization of a proclamation had been posted up under our eyes, prohibiting our commerce with the French colonies, and suspending *to us alone* the law of nations!” The answer to Mr. Fauchet from the Secretary of State represents this matter differently. The British consul general at Philadelphia, by a publication on the 10th of April, 1795, gave notice that he had received official communications that the islands of Guadaloupe, Marigalente and Desirade were by proclamation issued by his Britannick majesty’s general and vice admiral commanding in the West Indies, declared to be in an actual state of blockade; and that *neutral* (not singly *American*) vessels were thereby prohibited, from attempting to enter any ports or places in those islands with supplies of any kind, under the penalty of being “dealt with conformably to existing treaties, and as warranted by the established laws of nations.” And while existing treaties (our treaty with Great Britain had no operative existence till six months after the consul’s advertisement) and the laws of nations were avowed to be the rules by which the property of neutrals was in this case to be adjudged, had they reason to complain? If any neutral vessels attempted to enter any of those ports which were not in reality in a state of blockade, and yet were captured, could they be condemned? Certainly not by the rules which the British prescribed to themselves, “treaties and the laws of nations.” But if the British commanders proclaimed untruths, and issued arbitrary orders for capturing neutral vessels; and their cruisers and courts of admiralty executed them arbitrarily; could the American government prevent them? We could demand of the British government satisfaction for injuries to our own citizens consequent on such orders; and if any such were sustained, the arrangements for making reparation are now in execution. But admitting that any ports in the French colonies were in fact blockaded; who should notify it to neutral nations accustomed to trade with those ports? Certainly the officers of that power whose fleets and armies formed the blockade; and in the United States, no mode of giving universal notice could

be so effectual as a publication in handbills and newspapers.

Ninth, "It eluded all the advances made by the Republic for renewing the treaties of commerce, upon a more favourable footing to both nations; it excused itself on the most frivolous pretexts; whilst it anticipated Great Britain, by soliciting a treaty in which, prostituting its neutrality, it sacrificed France to her enemies; or rather looking upon her as obliterated from the map of the world, it forgot the services she had rendered it, and threw aside the duty of gratitude, as if ingratitude were a governmental duty."

Of the advances referred to, the first were made by Mr. Genet. These you will see in the printed correspondence between him and Mr. Jefferson. Mr. Genet's letter is dated the 23d of May, 1793, in which he informed the government that he was authorized to propose a treaty on a "liberal and fraternal basis."* Mr. Jefferson's letter to Mr. Morris our minister at Paris, dated the 23d of August, 1793, assigns the reason for postponing the negotiation.† "The Senate (says he) being then in recess, and not to meet again till the fall, I apprized Mr. Genet, that the participation in matters of treaty, given by the constitution to that branch of our government, would of course delay any definitive answer to his friendly proposition. As he was sensible of this circumstance, the matter has been understood to lie over till the meeting of the Senate." Congress were not to meet until December; consequently there was no necessity of precipitating the business. But with the best dispositions to form new commercial arrangements, mutually more beneficial than those of the treaty of 1778, the unwarrantable conduct of Mr. Genet, from the moment he landed at Charleston, until the date of his letter on the subject of the negotiation, was sufficient to excite caution in the American government. He had there violated the sovereignty of the United States.‡ "By authorizing the fitting and arming of vessels in that port, enlisting men, citizens and foreigners, and giving them commissions to cruise and commit hostilities on nations at peace with us," and with whom we had extensive com-

* State Papers, vol. i. p. 67.

† Ibid, p. 156.

‡ Mr. Jefferson to Mr. Morris, August 16. 1793, State Papers, vol. i. p. 137.

mercial connexions. "These privateers were taking and bringing prizes into our ports, and the consuls of France were assuming to hold courts of admiralty on them, to try, condemn, and authorize their sale as legal prize." Nevertheless, the government really desirous of forming a new and more advantageous commercial treaty with France, instructed the minister of the United States at Paris, to manifest the same to the executive of France, and to suggest for this purpose that the powers of Mr. Genet be renewed to his successor. It is true, that in his letter dated the 30th of September, Mr. Genet had renewed the proposition of negotiating a commercial treaty: but how was it possible for the government to undertake a negotiation with that minister, after "the correspondence which had taken place between the Executive and him," (a correspondence on his part replete with insults), "and the acts which he had thought proper to do, and to countenance in opposition to the laws of the land?" After the government had instructed our minister at Paris, to desire Mr. Genet's recall, and to declare to the government of France, "The necessity of their having a representative here, disposed to respect the laws and authority of the country, and to do the best for their interest which these would permit: and when it was only an anxious regard for those interests, and a desire that they might not suffer, which induced the Executive in the mean time to receive his communications in writing, and to admit the continuance of his functions so long as they should be restrained within the limits of the law, as theretofore announced to him, or should be of the tenour usually observed towards independent nations by the representative of a friendly power residing with them?" Under such circumstances what answer could the Executive return to Mr. Genet, more proper, and more marked with attention to France, than that his letter "would be considered with all the respect and interest which its *object* necessarily required?"

It is probable that the powers to negotiate a commercial treaty were not renewed to Mr. Genet's successor; certainly they were not communicated to our government.

We come now to the fresh overtures of a commercial negotiation made by Mr. Adet.

The first notices of them are found in memoranda of facts dated the 27th and 29th of June, 1795, and subscribed

by the Secretary of State. By these it appears, that on the 13th of June, Mr. Adet arrived at Philadelphia. On the 15th Mr. Fauchet introduced him to the Secretary of State ; on the 16th, Mr. Adet informed the Secretary, that he should the next day send him some act of the French government relative to commerce : but it was not sent. On the 22d of June Mr. Adet was reminded of the promised communication. He said it was copying, and gave reason to suppose that he should forward it on that day : but on that day nothing was received.

On the 29th of June, 1795, Mr. Adet had an interview with the Secretary of State : he observed that he brought with him the commercial decrees which Mr. Genet had formerly propounded to our government, and was instructed to negotiate a treaty of commerce upon their basis. He was asked whether he had any documents to communicate. He replied, that he would send them that day. He said he had to communicate some inquietudes respecting the late treaty between the United States and Great Britain. He observed that it was understood, that the United States had disabled themselves from entering into a new commercial treaty upon a liberal scale with France. The Secretary answered, that he had determined before he came, to ask the permission of the President, to communicate to him a copy of the treaty ; and then he might say in what part he supposed that any impropriety with respect to France existed. The President having afterwards assented, the Secretary on the same day delivered to Mr. Adet a printed copy of the treaty, on which he promised to communicate his remarks.

These remarks dated June 30th, and the Secretary's answer dated July 6th, refuting the objections they contained, I have already noticed. The subsequent proceedings will show, either that those objections did not make any strong impressions on Mr. Adet's mind, or that the Secretary's answer had removed them.

On the 30th June, 1795, Mr. Adet communicated a part of his instructions relative to "A new commercial treaty, and a new consular convention, to be entered into between France and the United States." The instructions imported that he was only to "Prepare with the American government the means and arrangement" of these treaties, and then to communicate them to the committee of

publick safety. The object of the new treaty was declared to be "To found the commercial relations of the two republicks upon stipulations *more reciprocally* advantageous and more clearly worded than that of 1778, and the object of the consular convention to secure the execution of the commercial treaty."

The Secretary of State answered on the 1st of July, expressing the readiness of the government to open the proposed negotiation; and requested a communication of the dates of the decrees to which Mr. Adet's instruction referred.

On the 8th of July, 1795, Mr. Adet replied to the Secretary of State, "That he neither knew nor possessed any other decree relative to the new negotiation to be opened between France and the United States, than that of the 5th* of February, 1793, communicated to us by citizen Genet." This letter of the 8th was received the 12th, accompanied by a note of the latter date apologizing for the delay on account of sickness. On the 12th the Secretary of State had written to him, *pressing him* on the subject of the new negotiation.

On the 16th of July, 1795, the Secretary of State again wrote to Mr. Adet; and after informing him that as *he* was not clothed with any very formal authority upon this subject, the President of the United States had thought proper to place *him* (*the Secretary of State*,) upon the same, and no other footing,—the Secretary proposed that the negotiation should be conducted in writing, unless when either thought it expedient to have an interview on any particular difficulty. And then assuring Mr. Adet that no unnecessary procrastination should be found in the Secretary of State, further proposed, that Mr. Adet should state 1st. The parts of the treaty which he wished to be abolished: 2d. Those parts which he wished to be corrected: and 3d. *Any additions* which seemed to him desirable: But expressed the readiness of the Secretary to adopt any other better mode of conducting the negotiation, if such occurred to Mr. Adet.

On the 20th of July, 1795, Mr. Adet, mentioning his sickness which for fifteen days had obliged him to abstain

* Mr. Adet has since corrected this date, the decree intended being dated February 19, 1793. This is already published with the State Papers of that year.

from business, replied on the subject of the negotiation in these words ; “ In a few days I shall have the honour of seeing you, and of taking the necessary measures in order to commence the business relative to the digesting of the new treaty and new consular convention.”

From this detail, it must I conceive be no easy task to find any facts by which Mr. Adet’s charge can be supported. What he affects to call “ frivolous pretexts” are substantial reasons ; and in respect to his own advances to treat, the conduct of our government manifests an *eagerness* to enter on the negotiation : certainly, you will discover in it no disposition to elude or to procrastinate.

You will be pleased to observe, sir, that the letter from the Secretary of State to Mr. Adet explaining the manner in which they should proceed in the negotiation, is dated the 16th of July ; and that Mr. Adet’s answer, agreeing shortly to meet the Secretary, in order to take the necessary measures for commencing the business, is dated the 20th of July ; yet in his note of November 15th, 1796, after having charged the government of the United States “ with eluding all advances made by the Republick for renewing the treaties of commerce, and excusing itself on the most frivolous pretexts ;” after acknowledging that the President had authorized the Secretary of State to negotiate, and that the latter had explained the manner of proceeding, he asks, “ But at what time ? When the ratification of the treaty concluded between Lord Grenville and Mr. Jay, no longer permitted the undersigned to pursue that negotiation.” I am sorry, sir, in this place to call your attention to dates. The British treaty was not ratified until the 14th of August, 1795, that is, about a month after the plan of negotiating with Mr. Adet had been proposed to him by the Secretary of State, and twenty-five days after he had agreed to proceed in it. And if that ratification finally induced him to abandon the idea of negotiating a new treaty between France and the United States, it did not instantly produce this determination. He doubtless perceived that his own objections to the British treaty were obviated by the answer from the Secretary of State ; and when he acknowledged the receipt of it, he had given up the right of judging of the treaty, whether it was good or bad. “ I shall,” (says he, in his letter of July 20th, 1795) “ transmit it (the Secretary’s answer) to the French

government, together with my observations and the treaty. In such important circumstances, it is exclusively the province of my government to judge; and I cannot permit myself to decide at all." And then immediately adds—"in a few days I shall have the honour of seeing you, and of taking the necessary measures in order to commence the business relative to the digesting of the new treaty and new consular convention." The British treaty then did not obstruct the negotiation; the principles of which might have been agreed on, and the articles drawn into form to be submitted to the respective governments: for that was all the respective negotiators were authorized to do.

WILL the ministers of the French Republick never cease to reproach us with "ingratitude?" If indeed "*France wrought*" as well as "*guarantied* the independence of the United States," as Mr. Adet asserts, "at a time when she might, as the price of that very independence, have granted them less liberal conditions," our obligations are greater than we have hitherto imagined. But it is time that these claims to our gratitude were investigated, and their extent ascertained. We have citizens yet alive, who were actors and witnesses of the declaration of our independence, and of the efforts to maintain it, with their effects, prior to our treaty with France. But laying no stress on our own recollections or consciousness, we will resort to the testimony of France herself.

France, by her minister the marquis de Noailles, having in the declaration of the 13th of March, 1778, which I have already quoted, announced to the court of London the treaty of friendship and commerce she had formed with the United States; and that to maintain the commerce of his subjects with them, which was the object of that treaty, his most christian majesty had "taken eventual measures in concert with the United States of North America;" that court published a justificative memorial, to vindicate to the world the war she had determined to wage against France. In the observations of the court of France on this British memorial, we find the following declarations on the part of France.* "While the ambassador of England put the king's patience to the strongest proofs, and while the court of London was constantly repeating de-

nials of justice to his majesty's subjects, at the same time that the British officers continued to desolate them on the sea, an event came to pass in America which essentially changed the face of things in that quarter of the world. This event was the defeat of the army under general Burgoyne. The news of this unexpected disaster, which arrived in Europe in Nov. 1777, astonished the British ministers, and must have the more sensibly affected them, *as it overthrew the plan they had laid for the reduction of the colonies.*" The observations then suggest that this great event induced, in the British cabinet, the idea of conciliation with America, and of a coalition against the crown of France, in revenge for the supposed aid rendered by her to the United States; and to gratify "their most dear and constant wish—that of humbling France."* "It was natural for the British ministry, *unable to subdue her colonies*, to seek to be reconciled to them, and to engage them to espouse her resentment. They might so much the more flatter themselves that they should succeed herein, as the proceedings of France with regard to American privateers, *and especially the dislike the king had at all times manifested to any engagement with the Congress*, must have given disgust and dissatisfaction to their deputies, and induce them, notwithstanding their well known aversion, to seek even in England, the safety of their country, when they failed to find it in France."

† "The king, well informed of the plan of the court of London, and of the preparations which were the consequence of it, perceived that no more time was to be lost, if he would prevent the designs of his enemies: his majesty determined, therefore, to take into consideration, *at length*, the overtures of the Congress."

‡ "The commissioners [from the United States] proposed to the king a treaty of amity and commerce, and an alliance offensive and defensive, by which his majesty should engage not only to acknowledge simply and purely the independence of the United States, but also to guaranty and defend it by force of arms. The king ordered an answer to be given, that he could indeed look upon the independence of the United States as existing; but that it did not belong to him to acknowledge it, because he had not

* Obs. p. 64.

† Obs. p. 66.

‡ Obs. p. 67.

any right to judge of it; neither could he guaranty it, *as he did not intend to enter into a war for its support.* His majesty in consequence refused an offensive alliance, and confined himself to the *treaty of amity and commerce.* But as it was more than probable that the court of London *HAD formed the design of attacking France,* his majesty thought he ought to enter into an alliance with the United States, *eventual and purely defensive.* The stipulations contained in this second treaty are in substance, that *if France should be attacked by the court of London, before the cessation of hostilities between that court and its colonies, then the king and the United States should mutually assist each other against the common enemy: That the king should guaranty the independence and sovereignty of the United States; and that he should not lay down his arms till it should be acknowledged by Great Britain."*

Thus it is manifest that the United States were to be left still to fight their own battles, *unless Great Britain should choose to increase the number of her enemies by attacking France,* in which it would be as truly the interest of France as of the United States to make it a common cause.

* "This last treaty remained secret, because it was not in force at the time of concluding it; but that of commerce was notified at the court of London, March 13, 1778." The first words of the notification are these—"The United States of North America, *who are in full possession of independence,*" &c. The whole paragraph has been already quoted. The notification further expressed, "that the king being determined to protect effectually the lawful commerce of his subjects, and to maintain the dignity of his flag, his majesty has, in consequence, taken eventual measures, in concert with the United States of North America." The court of London chose to consider this notification as a declaration of war, of which they accuse the king as being the author, and represent him as the violator of laws, divine and human, &c. &c. "The act, however, which has drawn upon the king such odious imputations, has, for its foundation, *two incontestable truths; the first, that at the period of the 6th of February, 1778, the Americans had the publick possession of their independence; the second, that the king had the*

right to look upon this independence as existing, without being obliged to examine the legality of it, and that no law forbade him to form connections with the Americans."

The observations then reciting that the fruitless attempts of the colonies to obtain redress from their mother country, in the mode of supplication, had induced them to league together to maintain their privileges sword in hand; and, soon after to publish the solemn act, whereby they declared themselves independent, say, * "This act, which is of the fourth of July, 1776, induced the court of London to give way to her resentment; she displayed her power to chastise the Americans, and to reduce them by conquest. But what has been the fruit of their efforts? Have they not served to *demonstrate* to America, to all Europe, and to the court of London herself, her impotence, and the *impossibility of her ever hereafter bringing the Americans again under her yoke!*"—That she had given this demonstration to *America*, is evident by the manner in which Congress received the *conciliatory bills*, hastily sent from the court of London to America, and communicated by lord and general Howe. Congress were then uninformed of the treaties which their commissioners had lately concluded at Paris. Yet confident in the strength and spirit of their country, and of the inability of Britain to subdue it, they† resolved *unanimously* to reject these overtures for peace and conciliation, and to hold no conference or treaty with any commissioners on the part of Great Britain, unless, as a preliminary, they withdrew their fleets and armies, or in positive terms acknowledged the independence of these states.

Again.—‡ "It is sufficient for the justification of his majesty, that the colonies, which form a nation, considerable as well for the number of their inhabitants, as for the extent of their dominion, have *established their independence*, not only by a solemn declaration, *but also in fact*; and that they have supported it against the efforts of their mother country. Such was, in effect, the situation of the United States, *when the king began to negotiate with them*. His majesty had full liberty of considering them as

* Obs. p. 73.

† Journals of Congress, April 22, 1776.

‡ Obs. p. 77.

independent, or as the subjects of Britain : He chose the first part, because HIS SAFETY, *the INTEREST of HIS PEOPLE*, invariable policy, and above all, the *secret projects* of the court of London, *imperiously laid him under the necessity.*" The *secret projects* here referred to were those of reconciliation, on terms which might satisfy the United States, and produce a re-union and coalition for the purpose of *falling upon France*. To avoid the risk of this combined attack, to avoid greater danger in future, by preventing the possibility of uniting again the great portions of the British empire, *separated in fact*, and thus essentially to diminish its power, were the avowed inducements with the court of France, to consider the United States as independent. Having stated these things, they * "ask if there is a sovereign who, in the same situation with his majesty, would not have imitated his example?"

Again—† "He (the king of France) had the right to consider as independent the confederate inhabitants of an immense continent, who presented themselves to him with this character; especially after their ancient sovereign had *demonstrated*, by efforts as continual as painful, *the impossibility of bringing them back to obedience.*"

‡ "To complete the justification of his majesty, nothing remains but to examine, whether what are called *reasons of state*, could have determined his majesty to connect himself with the Americans. To treat this question with all the clearness of which it is susceptible, the political interest of France must be viewed under two different relations; the first respects the other powers of Europe; the second respects Great Britain."

"In treating with the Americans, *after they became independent*, the king exercised the right inherent in his sovereignty, *WITH NO OTHER VIEW than to put an end to the predominant power, which England abused in every quarter of the globe.*" The observations then suggest, that by this conduct the king has essentially watched over the interest of all the sovereigns of Europe § "by contributing to restrain a power which has always carried to excess the abuse of her resources."

* Obs. p. 78.

† Obs. p. 82.

‡ Obs. p. 83.

§ Obs. p. 89.

The court of London having charged the king of France with ambition, and the project of *demolishing* the power of England, by his engagements with the Americans, the observations declare, that * “nothing more will be discovered in them [his engagements with the United States,] on the most accurate scrutiny, than a *diminution* of this power, a diminution which England has herself provoked, by a conduct the most unjust and most irregular, and which the tranquillity and happiness of Europe have for a long time required.”

† “The most vigilant and consummate prudence could not devise adequate precautions against the enterprises of such a power; so that the only means of being secured from it was *to seize the opportunity of diminishing it.*”

‡ “It may then be truly said that on examination of the conduct of the king—it was not only *just* and *lawful*, but even *necessary*, as well for the *individual interest of France*, as for that of all Europe.”

I will trouble you with but one more extract from the justificatory observations of the court of France.

§ “To deceive the other nations with regard to the real motives which have directed the conduct of the king, the British ministry maintain, that he entered into treaty with the Americans, not because he feared the secret views of Great Britain, but because he foresaw that the Americans defeated, discouraged, without support, and without resources, were about to return to their mother country; and that there was not a moment to be lost in reanimating and confirming them in their opposition. It was without doubt for the sake of this assertion, that the British ministry have thought it beneath the dignity of their sovereign to search for the period at which France formed connections with the United States; it might with greater truth be said that this research did not coincide with their plan of defence. The king is willing to spare the British ministry a task so disagreeable and embarrassing, by observing for them, that the conversations which led to the treaties of the 6th of February, 1778, *were considerably posterior* to the capitulation of general Burgoyne. Now it is notorious that this event elevated the courage and the hopes of the

* Obs. p. 90.

† Obs. p. 91.

‡ Obs. p. 92.

§ Obs. p. 95, 96.

Americans, as much as it dejected the British nation, and principally the court of London. If then the king has listened to the propositions of Congress, *after this period, so disastrous to the British, it has not been, and could not have been for any other reason, but because he thought with the United States, that their independence was thenceforward irrevocable.*"

In these extracts from the observations of the court of France, we see an open avowal of her motives for entering into treaties with the United States during our revolution; but do such motives afford any strong claims to our gratitude: she rejoiced at the prospect of a final separation of the thirteen colonies from Great Britain:—she saw them erected by their solemn declaration into independent states:—but during near three years of our contest she continued waiting for some fortunate event that should ensure stability and ultimate success to our enterprise. This event took place in the capture of a whole British army. "Then the king listened to the propositions of Congress, because he thought with the United States that *their independence was irrevocable.*" He then treated with the Americans "*with no other view than to put an end to the predominant power which England exercised in every quarter of the globe.*" "A *diminution* of this power (says the king) the tranquillity and happiness of Europe have for a long time required:" "The only means of being secured from it, *was to seize the opportunity of diminishing it:*" and *he did seize it,* "because *his safety, the interest of his people, invariable policy, and above all, the secret projects of the court of London imperiously laid him under the necessity.*"

After these repeated declarations on the part of France, that her only view in contracting engagements with the United States, was to diminish the British power, and thereby promote the safety and interest of her own people, and the tranquillity of Europe; very unexpected indeed are the modern claims of boundless and perpetual gratitude. Nevertheless, animated as we always have been with sincere desires to maintain those useful and friendly connections with France which had their foundation in our revolution, we should have remained silent on these claims, had not the frequency and manner in which they have been urged, compelled their discussion. We

are not now disposed to question the importance of the aid we actually derived from France in the war of our revolution : nor to retract the grateful acknowledgments that all America has from that time offered to that nation : we were in the habit of expressing our *gratitude* to her for the benefits which we received, although they resulted from her exertions to advance *her own interest* and secure *her own safety*. But if those benefits had been rendered from *pure benevolence*, from *disinterested good will to us*, and we had been remiss in acknowledging them, is it the part of generosity, of magnanimity constantly to upbraid the receivers of their favours with ingratitude ? Do not such reproaches cancel the obligation ? But if for favours apparently generous, *substantial returns* are demanded ; the supposed liberal act degenerates and becomes a mercenary bargain.

If such only are the motives for our gratitude towards France, at the commencement of her political and commercial connexions with us, in the midst of our war with Great Britain, what more can we discover at the conclusion of that war ? Let us examine.

In 1781, with the assistance of a French army by land and a powerful fleet by sea, a second British army was captured.

This event made even the British government despair of bringing the United States again under her subjection. The ministry was changed : and the parliament passed an act to authorize the king to make peace. In the summer of 1782, an agent on the part of Great Britain, repaired to Paris to negotiate with the commissioners of the United States. For some time, Doct. Franklin and Mr. Jay were alone at Paris. The commission to Mr. Oswald (the British negotiator) authorized him to treat of and conclude a peace or truce with any commissioner or commissioners, named or to be named by the *colonies* or *plantations* of New Hampshire, &c. (naming the thirteen) or with any of them separately, with parts of them, or with any persons whatsoever. Mr. Jay was not satisfied with this commission to Mr. Oswald : the independence of the thirteen states was no where intimated. Agreeably to their instructions from Congress, to take advice of the court of France, the commissioners communicated Mr. Oswald's commission to the prime minister, the count de

Vergennes. The count expressed his opinion that the commission was sufficient; that it was such an one as we might have expected it would be: "That an acknowledgment of our independence, instead of *preceding*, must, in the natural course of things, be the *effect* of the treaty." This opinion the count continued from time to time to repeat. In short, "it was evident the count did not wish to see our independence acknowledged by Britain until they had made all their uses of us." Mr. Jay still continued unmoved. He conferred with Mr. Oswald, and "urged in the strongest terms, the great impropriety and consequently the utter impossibility of our ever treating with Great Britain on any other than an *equal footing*; and told him plainly, that he (Mr. Jay) would have no concern in any negotiation in which we were not considered as an *independent people*."

It was on this occasion that Mr. Oswald communicated to Mr. Jay this article of his instructions;—"In case you find the American commissioners are not at liberty to treat on any terms short of independence, you are to declare to them, that you have our authority to make that cession: our ardent wish for peace disposing us to purchase it at the price of acceding to the complete independence of the thirteen colonies."

The British ministry approved of this communication; but still were for *treating* with us as *colonies*, and making an acknowledgment of our independence *only an article of the treaty*. Mr. Jay's discernment discovered the source of the backwardness, at this time, in the British court to admit our independence *previous* to the negotiating of the treaty; and mentioned it with his reasons to Mr. Oswald; who far from contradicting Mr. Jay's inference, told him a fact which confirmed his opinion that it originated in the court of France, and was communicated to that of London by the British commissioner then in Paris to treat of peace between France and Great Britain. Mr. Jay then explained to Mr. Oswald what he supposed to be the natural policy of the French court, and showed him, "that it was the interest of Britain to render us as independent on France, as we were resolved to be on Britain." Mr. Oswald was convinced. Mr. Jay reminded him of the several resolutions of Congress passed at different periods, not to treat with British commissioners

on any other footing than that of absolute independence; and proposed to give to him in writing what he had before expressed in conversation—*his determination not to treat but on the footing of equality*. Mr. Oswald preferred having it in writing. Mr. Jay prepared the draught of a letter, to be signed by him and Doct. Franklin, expressing their determination not to treat but on terms of equality, as an independent nation; and exhibiting the reasons of this determination. Doctor Franklin thought the letter “rather too positive, and, therefore, rather imprudent; for that in case Britain should remain firm, and future circumstances should compel us to submit to their mode of treating, we should do it with an ill grace, after such a decided and peremptory refusal. Besides, the doctor seemed much perplexed and fettered by the instructions from Congress *to be guided by the advice of the French court*. Neither of these considerations affected Mr. Jay. For as to the first, he could not conceive of any event which would render it proper, and therefore possible for America to treat in any other character than as an independent nation. And as to the second, he could not believe that Congress intended they should follow *any advice which might be repugnant to their dignity and interest*.”

Doctor Franklin's doubts prevented this letter being signed. Mr. Oswald was disappointed; and desired to see the draught. He saw it, and requested a copy of it. After taking time for consideration, Mr. Jay complied with the request. “For though unsigned it would convey to the British ministry the sentiments and opinions he wished to impress; and if finally they should not be content to treat with us as independent, they were not yet ripe for peace or treaty with us. Besides, he could not be persuaded that Great Britain, after what the house of commons had declared, after various other acts of that government manifesting the intention to acknowledge it, would persist in refusing to admit our independence, provided they really believed that we had firmly resolved not to treat on more humble terms.”

“With the copy of this draught Mr. Jay gave Mr. Oswald copies of the various resolutions of Congress which evinced their adherence to their independence. These papers Mr. Oswald sent by express to London.

and warmly recommended the issuing a new commission, to remove all further delay."

Mr. Jay having afterwards ascertained that the count de Vergennes had sent a confidential agent to London, but whose journey was intended to have been a secret, for purposes evidently hostile to the interests of the United States, determined immediately to counteract the project, by an agent on whom he could rely, to make to the court of London such representations as he thought the occasion demanded. He succeeded; and in about two weeks, Mr. Oswald received a new commission in the form for which Mr. Jay had contended.

Mr. Jay remarked, that agreeably to the declaration of independence, the *United States*, as free and independent, had full power to levy war, *conclude peace*, contract alliances, &c. That by the act of confederation, the style of the confederacy was declared to be, THE UNITED STATES OF AMERICA, and by that act Congress were vested with the sole and *exclusive* right and power of determining on *peace* and war, and of entering into *treaties* and alliances: that being of right and in fact free and independent States, their representatives in Congress granted a commission to certain gentlemen, of whom Dr. Franklin and he were two, *in their name* to confer, treat and conclude with ambassadors or commissioners *vested with equal powers*, relating to the re-establishing of peace, &c. But the first commission to Mr. Oswald was not equivalent: the *United States* were not named in it; nor *their* commissioners, who consequently were not the persons with whom Mr. Oswald was authorized to treat. And if the commissioners had consented to treat with Mr. Oswald under such a commission, what would have been the condition of the people of the United States in the interval between the commencement of the negotiation and the conclusion of peace? They would have been *not independent citizens*, but by our acknowledgment, *British subjects*! Mr. Jay would not consent to this degradation, after we had maintained our independence six years, after we had established it in fact, and after Congress had by firm and repeated resolutions refused to treat with Great Britain, unless as a *preliminary*, she withdrew her fleets and armies, or else *in positive and express terms acknowledged the independence of the United States*. At the same

time Congress manifested their readiness to attend to such terms of peace as might consist with the *honour of independent nations*: but the honour of an *independent nation* forbade their treating in a *subordinate* capacity. Even the dignity of France, who four years before treated with us as an independent nation, required that we should not degrade ourselves when going to treat with her enemy. And why then should her ministers desire us to do it? Especially when the treaty of defensive alliance declared the "essential and direct end of it was to maintain effectually the liberty, sovereignty and *independence* absolute and unlimited of the United States, as well in matters of *government* as of commerce." There were several reasons. The two parties, France and the United States, engaged not to lay down their arms until the independence of the United States should be attained. The explicit acknowledgment of their independence by Great Britain would show that for the essential and direct object of the alliance there was no necessity of continuing the war. But since making this treaty of alliance with the United States, France had formed *other connections*, with whose views we had no concern, and for whose sake we were not bound to postpone the offered peace. We have seen the explicit avowal of the king of France that he entered into a treaty with the United States with the view to promote the safety and interest of his kingdom and subjects, by diminishing the power of England: but in doing this, and eventually facilitating our independence on Great Britain, it became apparent that there would be no objection to our dependence on France, particularly in "leaving the king master of the terms of the treaty of peace." And to keep us thus far dependent was manifestly the object of certain measures of the French court, calculated to deprive the United States of an immense western territory, of the navigation of the Mississippi, and of the fisheries, except on our own coast.

A combination of facts and circumstances leave no doubt of the intentions of the French court, as to the objects above mentioned. I cannot undertake the lengthy detail, and will only just mention in regard to *territory*, what was proposed and urged by one whose official station rendered it impossible to believe, that he was expressing only his own sentiments; or that he was not

acting by the direction of the French court. He proposed, what he called a conciliatory line between the United States and Spain. This was to begin at the division of East from West Florida, and run thence to fort Toulouse on the river Alabama, thence by different courses to Cumberland river, and down the Cumberland to the Ohio. It was insisted that the United States could have no pretensions westward of this line. That "as to the course and navigation of the Mississippi, they followed the property, and would belong therefore to the nation to which the two banks belonged: the United States could have no pretensions, not being masters of either border of the river;" and that "as to what respects the lands situated to the northward of the Ohio, there was reason to presume that Spain could form no pretensions thereto: their fate must be regulated with the court of London." It is certain that originally, Spain made no pretensions to any lands eastward of the Mississippi to the northward of the Floridas; and it is clear that the idea of her finally making the claim, was suggested by the court of France.

We are now prepared to understand the declarations made in the instructions to citizen Genet, minister plenipotentiary from the French Republick to the United States. These instructions are dated the 4th of January, 1793, and were published in December of that year, in Philadelphia, by Mr. Genet, in vindication of his extraordinary measures, which had induced our government to desire his recall. In these instructions we find the following passages. "The executive council has called for the instructions given to citizen Genet's predecessors in America, and has seen in them, with indignation, that at the very time the good people of America expressed their gratitude to us in the most feeling manner, and gave us every proof of their friendship, Vergennes and Montmorin thought that it was right for France to hinder the United States from taking that political stability of which they were capable; because they would soon acquire a strength, which it was probable they would be eager to abuse." "The same Machiavelian principle influenced the operations of the war for independence: *the same duplicity reigned over the negotiations for peace.*"

We see, then, that in forming connection with us in 1778, the court of France, the actual organ of the nation.

had no regard to the interest of the United States ; but that their real object was, by seizing the occasion of dismembering the British empire, to diminish the power of a formidable rival ; and that when, after we had carried on a distressing war for seven years, the great object for which we had contended, independence was within our reach, that court endeavoured to postpone the acknowledgment of it by Great Britain, and eventually to deprive us of its fairest fruits—a just extent of territory, the navigation of the Mississippi, and the fishery.

Such being the motives and conduct of France, what inspired our truly grateful sentiments towards that nation ? The ardent affection, the sincere friendship of Americans to Frenchmen ? We were engaged in a common cause against Great Britain. We received loans of money—We were aided by troops and ships in attacking and conquering the common enemy in the bosom of our country ; and this association in war produced acquaintances and personal friendships : and experiencing these benefits, we gave way to our feelings, without inquiring into the motives from which they were rendered.

But why are we so often reminded of the debt of gratitude ? Is it really because more than *gratitude*—because *compensation* is expected to cancel it ? If compensation is the object, the treaty of alliance has absolved the claim—“ The contracting parties declare, that being resolved to fulfil, each on its own part, the clauses and conditions of the present treaty of alliance, according to its own power and circumstances, *there shall be no after claim of compensation*, on one side or the other, whatever may be the event of the war.”

I am here naturally led to notice Mr. Adet's charge already mentioned—*That we have not offered to France the succours which friendship might have given without compromising the government.*

If Mr. Adet had specified the kind of succours which might thus have been offered, we could better judge of the correctness of his assertion.

But is it true that we have rendered no succours to France ? Read the following passages in the Secretary of State's letter of the sixteenth of August, 1793, to Mr. Morris. “ We recollect with satisfaction, that in the course of two years, by unceasing exertions, we paid up seven years arrearages and instalments of our debt to

France, which the inefficacy of our first form of government had suffered to be accumulating ; that pressing on still to the entire fulfilment of our engagements, we have facilitated to Mr. Genet, the effect of the instalments of the present year to enable him to send relief to his fellow citizens in France, threatened with famine ; that in the first moment of the insurrection which threatened the colony of St. Domingo, we stepped forward to their relief with arms and money, taking freely on ourselves the risk of an unauthorized aid, when delay would have been denial ;” —“ that we have given the exclusive admission to sell here the prizes made by France on her enemies in the present war, though unstipulated in our treaties, and unfounded in her own practice or in that of other nations, as we believe.”

To this detail I have to add, that of all the loans and supplies received from France in the American war, amounting nearly to fifty-three millions of livres, the United States under their late government had been enabled to pay not two millions and a half of livres ; that the present government, after paying up the arrearages and instalments mentioned by Mr. Jefferson has been continually anticipating the subsequent instalments, until in the year 1795, the whole of our debt to France was discharged, by anticipating the payments of eleven millions and a half of livres ; no part of which would have become due until the second of September 1796, and then only one million and a half ; the residue at subsequent periods ; the last not until the year 1802.

There remain yet various passages in Mr. Adet's notes on which some observations are to be made.

In my letter of the 1st of November last, in answer to Mr. Adet's note of October 27th, in which he communicated the decree of the executive directory of the second of July last, declaring that the flag of the Republic of France, should treat the flag of neutrals in the same manner as these shall suffer it to be treated by the English, I asked an explanation of the decree ; mentioning the circumstances which excited doubts. There seemed to be sufficient cause for inquiry. Had the decree referred to the *past* captures by the English, our knowledge of *them* would have been some guide in forming our opinion of the threatened captures by the French : but the operation of

the decree was to depend on the *future* conduct of the English: the French were to treat the flag of neutrals as these *shall* suffer it to be treated by the English. As this could not be ascertained beforehand, we wished to know whether the restraints then exercised by the British government were considered as of a nature to justify a denial of those rights which were pledged to us by our treaty with France? Whether the orders had actually been given to capture the vessels of the United States? And if given, what were the precise terms of those orders? Mr. Adet, in his reply, says that I appear not to have understood either the decree of the directory or his note which accompanied it. The meaning of the decree is certainly not very obvious. The manner of executing it, was declared to depend on a contingency—the future conduct of the English. How were French cruisers in the four quarters of the world to determine what was the conduct of the English at any given time? If he could have furnished a copy of the orders actually given to French armed vessels, under the decree, we might have seen clearly what were the intentions of the directory. If we are to take the practice of the French armed vessels and of some of the French tribunals as the true illustration of the decree, Mr. Adet's own explanation will be very defective. He has specified only two cases—the taking of English (or other enemy's) property on board American vessels, and the seizure of all the goods classed as contraband in our treaty, with Great Britain. In the case of contraband goods, the seizure of them is lawful only when they are destined to the ports of their enemies; and the *contraband goods only* are liable to confiscation. But the special agents of the directory in the West Indies, order the seizure of all vessels having on board contraband goods, no matter whether destined to an enemy's, or to a neutral, or even to a French port; and when seized they confiscate not merely the contraband articles, but all other goods, and the vessel herself in which they are laden. They also assign in their decrees of confiscation another cause of capture and condemnation—that the American vessel has sailed to or from a port in possession of the English. We are not informed that the English take any neutral vessels for this cause. We have heard of several American vessels being captured and confiscated by the French, merely because they

had not a sea letter, when no doubt could have been entertained of the property being American. Yet it is conceived that the want of a sea letter was never intended to exclude other proofs of property.

Further, ought we to have imagined that the executive directory intended to leave it to the discretion of every privateer and of every inferior tribunal to judge what at any time *subsequent* to their decree was the *actual* treatment received by American vessels from the British? Ought we to have imagined that the decree was formed in such indefinite terms on purpose to give scope for arbitrary constructions, and consequently for unlimited oppression? Ought we to have imagined what Mr. Adet has himself declared to be the meaning of the decree, that the French armed vessels were not to content themselves with capturing American vessels having English property or contraband goods on board, and getting such property and goods condemned by their tribunals; but if any English commanders were to practise "*vexations*" towards Americans, that Frenchmen were to do the same? Ought we to have imagined that the directory intended the citizens of France should be encouraged to take revenge on their friends for the outrages of their enemies? And what is to limit these vexations? If one English commander in a hundred, perversely and wantonly abuses his power, is every French officer to become his rival in dishonour? or if we are to suffer only measure for measure (and surely the decree goes not beyond this) who is to designate the every hundredth French officer, who is to be the instrument of similar oppression?

But French armed vessels are to make all these captures in violation of the treaty, and we are to suffer all these vexations in violation of reason and humanity, while we endure them from the English "without an efficacious opposition!" And what opposition will be deemed *efficacious*? For all captures made by the British contrary to the law of nations, we have, agreeably to that law, demanded satisfaction. The British have engaged to make us satisfaction; and commissioners are now sitting to liquidate those demands. What opposition could have been more efficacious? What further opposition can be lawful?

Instead of further comments on this subject, let me present to you some passages in Mr. Adet's letter of the 14th

of July, 1795. In this letter he communicated to the Secretary of State the decree of the committee of publick safety of the *3d Jan. 1795, repealing the 5th article of the decree of the †15th of November, 1794. The latter violated our treaty by subjecting the property of the enemies of France on board American vessels to capture, and by adding to the list of articles contraband: it was therefore repealed by the former. Mr. Adet seized this occasion to make the following declaration. "You will see, sir, (said he) in both [the decrees] the undisguised disposition and sincere desire of the French government religiously to observe the engagements it has contracted with its allies, and its readiness to redress infractions which have never taken place but from the impulse of circumstances." "It is amidst her triumphs that the Republick loves to give this striking mark of its fidelity. Victorious France knows no other concern than that of justice,—no other diplomatic language than that of truth."—To this truth, to this justice, to this fidelity we now make our appeal.

From the style of Mr. Adet's complaint of the British being *suffered* to arm in our ports, it might be imagined the instances were numerous. None were *permitted*: the *actual* armaments were few: and are as old as the year 1793, and were represented by Mr. Genet to the Secretary of State. "What answer (asks Mr. Adet) did the government give to the representations of the minister of the French Republick in this respect? It said that these vessels sailed too suddenly; that it was not able to cause them to be stopped." The answer was given by the Secretary of State in different words. ‡ "Those from Charleston and Philadelphia have gone off *before it was known* to the government, and the former indeed in the first moments of the war, and before preventive measures could be taken in so distant a port." In the case of the *Trusty*, captain Hale, at Baltimore, the governour of Maryland having been informed that she had been *buying guns*, had given orders to examine the fact; "but she got off before the officer could get on board, having cleared

* 14th Nivose 3d year.

† 25 Brumaire 3d year.

‡ State Papers, vol. i. p. 112. June 30, 1793.

out three or four days before.”—I have not observed that Mr. Genet ever renewed his complaint with regard to any of these vessels; whence I suppose he was satisfied with the answer: as indeed he ought to have been. The two English vessels that sailed from Philadelphia escaped even the vigilance of the French consul—*both had departed many days before he had been informed of them. This is stated by the consul himself in his report of the twenty-first of June, 1793, to Mr. Genet. And yet the government is now charged by Mr. Adet with violating the treaty, because it did not stop them!—Although the officers of the United States had been required to be watchful, and to report all illegal armaments in our ports, yet it was natural for the government to expect to derive information from the French consuls, who doubtless were charged by their own government to be particularly vigilant in regard to all attempts at such armaments by the enemies of the Republick.—Mr. Adet remarks, that “some inhabitants of the United States had aided in these illegal armaments” of the enemies of France: and asks, “what measures were taken against them? Was any search made to discover them—to prosecute them? Never.” Yet the very letter from Mr. Genet to the Secretary of State, in which, and its enclosures Mr. Adet has found this subject of complaint, suggests a different conclusion—† “I learn with pleasure (says Mr. Genet) by your letter of the 23d of this month, [June, 1793] that the government of Georgia have caused to be stopped a vessel armed in that state, for the purpose of cruising against the French, *and that the persons interested in this vessel will be prosecuted.*”

I shall say but a few words on the subject of the letters of which Mr. Adet complained that they remained unanswered. The first (of September 23th, 1795) contained those reproachful insinuations which were recited in my letter of the 1st of Nov. last. Why were these introduced by him if they were not to be applied? An answer was draughted on the subject of his letter, with animadversions on those insinuations: but desiring to avoid irritations, the answer was not sent. It was deemed of the less consc-

* State Papers, vol. i. p. 110.

† State Papers, vol. i. p. 110.

quence, seeing in my letter to Mr. Monroe of the 12th of September, 1795, the sentiments and reasonings of the government on that and other subjects relating to France had been fully expressed, to enable him to make immediate communications to the French government itself; and it was hoped that the information given in that letter, and in others written to him the preceding summer would have furnished materials (and that these materials would have been timely used) for such representations as would have satisfied the French government that the United States, in forming the treaty with Great Britain had only exercised an indisputable right; and neither by that treaty nor any other act had infringed a single article of our treaties with France.

On the subject of the impresses of our seamen, mentioned in Mr. Adet's letters of March and April 1796, I shall only add, that nothing was more notorious than that those impresses had excited universal resentment in the United States, and been the subject of repeated remonstrance from our government to the British court. Thus in Mr. Pinckney's note to lord Grenville in August, 1793, which was published here that year, in the same collection of state papers with Mr. Jefferson's letter of September 7th* which Mr. Adet has quoted, and on the 5th page next succeeding it, we find the following: "Under this head, it may be observed that for want of arrangements being made for the security of American seamen in the ports of this country (England) they are subject to the various hardships Mr. Pinckney has *so frequently detailed* to lord Grenville." And in the next page, in his letter to Mr. Jefferson, Mr. Pinckney says, "the protection afforded our seamen remains also on the same footing; they (the British government) profess a willingness to secure to us all real American seamen, when proved to be such; but the proof they will not dispense with." To remove as far as possible the embarrassments arising from this cause, and more effectually to protect our seamen, was the object of a bill pending in Congress, and the subject of publick debate, at the time I received Mr. Adet's letters. This bill was passed into a law.

* Mr. Adet by mistake dates it September 13th.

All these acts demonstrated that the government did not assent, but on the contrary that they resisted the impressment of American seamen: and this resistance has been continued; consequently we cannot be charged on this ground with a violation of our neutrality.

Among the former subjects of complaint not now renewed by Mr. Adet, is that against the government for permitting the purchase and exportation of horses, by British agents, in the course of the last winter and spring. The correspondence on this subject is lengthy; and yet the question lies within a very narrow compass.

Perhaps no rule is now better established, than that neutral nations have a right to trade freely with nations at war; either by carrying and selling to them all kinds of merchandise, or permitting them to come and purchase the same commodities in the neutral territory; in the latter case not refusing to one power at war what it permits another to purchase; with this exception in respect to articles contraband, that if the cruisers of one of the belligerent powers meet at sea with neutral vessels laden with such articles destined to the ports of their enemies, the neutral vessels may be captured, and the contraband goods will be lawful prize to the captors: but the residue of their cargo and the vessels themselves are to be discharged.

But if there were any doubt on this point under the law of nations, there can be none in relation to France and the United States; because this matter is specially regulated by their treaty of commerce. This treaty, so far from *restraining* the trade of either party remaining neutral, while the other is engaged in war, *provides regulations agreeably to which it should be conducted*.

The 12th and 13th articles authorize either party that is at war, to stop the neutral merchant vessels of the other destined to the ports of an enemy, upon just grounds of suspicion, concerning the voyage or the lading. If on examining the ship's papers, it appears there are any contraband goods on board, "consigned for a port under the obedience of his enemies," she may be carried into port, and the contraband articles may by regular proceedings in the admiralty, be confiscated: "saving always as well the ship itself as any other goods found therein, which by this treaty are to be esteemed free; neither may they

be detained on pretence of their being as it were infected by the prohibited goods, much less shall they be confiscated as lawful prize." It further provides, that if the master of the neutral ship shall be willing to deliver the contraband goods to the captor, and the latter receives them, then is the neutral ship to be forthwith discharged and allowed freely to prosecute her voyage. The 23d article goes further—if the neutral ship shall have on board the *enemies* of the other, "they are not to be taken out unless they are *soldiers in actual service*."

These articles are so explicit, it may seem strange that a doubt should arise concerning them; I presume no doubt did arise: for Mr. Adet, overlooking these provisions of the treaty, demanded that the government should stop the exportation of horses by the British, upon the principle that it was a neutral duty required by the law of nations. An answer was given to his demands, in which the regulations of our treaty with France were particularly brought into view, as well as the rules of the law of nations. Mr. Adet, however, after some time renewed his claims; but again kept the treaty out of sight. An answer was given to these renewed claims; and we heard no more on the subject until the French privateers in the West Indies began to capture American vessels which had *horses* on board: you will find among the documents on this subject the copy of a decree of the citizens Victor Hugues and Lebas, the special agents of the executive directory in the Windward Islands, condemning an *American vessel* and her *entire cargo* for having a small number of *horses* on board,—not bound to their *enemy's* but to a *neutral* port. And these special agents ground their decree on the advice they received from Mr. Adet, under the date of 14th Messidor, being July 2d, 1796. This vessel and cargo were thus condemned without the sight of a single paper belonging to her: the master had them in his pocket, and would have brought them home, but for the recollection of the interpreter, some hours after the sentence of condemnation had been passed. These citizens exercise indeed a very brief authority. The process in the case of a second American vessel, which to complete her lading had taken on board nineteen horses, but which was also bound to a neutral port, was in this form. The captain having come before one of the agents, he without any pre-

vious examination or hearing, addressing himself to the captain, pronounced sentence, in these words—"I have confiscated your vessel and cargo"—closing the sentence with opprobrious language.

Mr. Adet, on the 18th of May last revived his predecessor's claim of *right* by treaty to sell their prizes in our ports. This occasioned the correspondence on this subject, which you will find among the documents collected on this occasion. He contents himself, however, with considering it as a right granted not positively, but by *implication*. That is, because the treaty *forbids* the *enemies* of *France* to sell *their* prizes in our ports—therefore it *grants* to *her* a right of selling *her* prizes. As if my friend's *denial* of a favour to my *enemy*, was in fact a *grant* of the same favour to *me*. The simple statement of the ground of the claim would seem sufficient to show that the treaty will not support it. That sales of French prizes have been at all permitted, has been owing to the *indulgence* of the government. This indulgence was continued until it interfered with a new positive obligation: an obligation precisely the same that France herself contracted eight years *subsequent* to her treaty with us, *and with the same power*. This obligation is found in the 24th article of our treaty and the 16th of the French treaty with *Great Britain*. Thus France and the United States alike engaged to permit no enemy of Great Britain to arm privateers in their ports, *or to sell their prizes there*, or in any manner to exchange them. Consequently had France remained at peace and we engaged in a war with Great Britain, our privateers would not be permitted to sell their prizes in French ports.

And by the maritime law of France,* prizes except they are taken from her enemies, can stay in her ports no more than 24 hours, unless compelled by tempest to remain longer; and the sales of such prizes are forbidden under severe penalties. But notwithstanding the certainty of our right to forbid the *sales* of prizes in our ports, and notwithstanding the express legal command of the chief justice of the United States, holding a circuit court in South Carolina in May last, prohibiting the sale of a particular prize (the British ship *Amity*) at Charleston—the

* Valin, vol. 2, p. 272.

French agents sold the prize vessel, and the sale received the formal sanction of the *French consul*. Yet even this affair has been made a subject of complaint by Mr. Adet, because the collector of that port refused a clearance to the prize vessel thus sold in defiance of the authority of the United States; and because he also delayed, until, in a new case, he should get advice to permit the exportation of the cargo of the prize ship which on a survey had been reported to be irreparable.

Indeed the French minister has discovered an aptitude to complain. I may cite as instances his letters of the 9th January, and 3d of March, 1796: the former because the colours of France, which he had presented to the United States, were not permanently fixed and displayed before Congress: the latter, because some printers of almanacks or other periodical publications in the United States, in arranging the names of the foreign ministers and agents resident among us, had placed those of Great Britain before those of France and Spain. Mr. Adet desired my declaration in writing, that the government of the United States had no concern in printing the works in which the agents of the French Republick were registered after those of Great Britain, and that the works themselves might be suppressed. I gave him an answer in writing with my consent to his publishing it in the newspapers, agreeably to his request. The answer states, that in matters of this kind the government did not and could not interfere. With regard to the colours, I must observe that in what concerns our foreign relations, the President being the sole representative of the people of the United States, they were properly presented to him. He received them with all possible respect, and directed them to be deposited with our national archives, that both might be preserved with equal care.

It remains to notice a summary of complaints exhibited by M. De la Croix, the French minister for foreign affairs, to Mr. Monroe, our minister at Paris, under the date of March 9th, 1796, to which the latter returned an answer, under the date of March 15th. These were enclosed in Mr. Monroe's letter of the 2d of May, and received at the department of state, on the 19th of July. Copies of both papers and an extract of so much of his letter as

relates to this subject are among the documents now collected.

First complaint—The inexecution of treaties. 1st. The courts of justice have taken and still take cognizance of prizes brought by French privateers into the ports of the United States.

2d. English ships of war have been admitted into those ports, even in cases prohibited by the 17th article of the treaty; that is, when they have made prizes on the French Republick or its citizens; and have also conducted thither their prizes.

3d. The consular convention has in two points become illusory—1st. For want of giving to the consuls the means of having their decisions executed in all disputes between Frenchmen, of which the consuls have the exclusive cognizance: 2d. Because the judges charged with issuing warrants for apprehending French mariners who desert, require the original roll of the crew to be first produced: 4th. The arrest of the corvette *Le Cassius* and her captain.

Second complaint—The impunity of the outrage committed on the Republick in the person of its minister, the citizen Fauchet, by the English ship *Africa*, in concert with the vice-consul of that nation, within the waters of the United States.

Third complaint—"The treaty concluded in November, 1794, between the United States and Great Britain."

Excepting the second complaint, relative to the attempt of the English ship *Africa* to seize Mr. Fauchet and his papers—and the 3d article under the first complaint relative to the consular convention, all the charges in this summary have been already examined, and we think proved to be unfounded.

As to the consular convention, many inconveniences would attend the giving to the consuls a jurisdiction to the extent contended for on the part of the French Republick, to be exercised by the French consuls in the United States; and consequently by American consuls in France. The inconveniences are manifestly so great as to require very explicit language in the convention of the two nations on this subject, to authorize the conclusion that such enlarged jurisdiction was intended. It would be to erect in foreign countries, complete courts of justice, with effectual process to compel the appearance of parties and witnesses,

and to execute their decisions. And as the transactions in commerce and navigation could not in the nature of things be confined to the foreigners alone, the citizens of the country must often be necessary witnesses to those transactions, and of course rendered amenable to this foreign jurisdiction in their own country; whereas the jurisdiction demanded is only of French consuls over French citizens in the United States; and reciprocally of American consuls over the citizens of the United States in France. From these considerations a presumption would arise, that the jurisdiction contemplated in the consular convention was to be merely *voluntary*, but at the same time *exclusive of the courts of the country*. An examination of the convention we believe will support this and no other construction. The 12th article provides that all differences and suits between Frenchmen in the United States, and between citizens of the United States in France, and particularly all disputes between seamen and their captains, and between captains of different vessels of their nation, shall be determined by the respective consuls, either by a *reference to arbitrators*, or by a summary judgment and *without costs*. "No officer of the country, civil or military, shall interfere therein, or take any part whatever in the matter."—This last clause alone would seem sufficient to repel the claim we are considering. Sheriffs, marshals, and their deputies, cannot aid in the execution of consular decisions, because they are "officers of the country," expressly forbidden to "take any part in the matter." But was it meant that the laws should give consuls the power to appoint such executive officers of their own nation? We find no such thing in the convention. On the contrary, in the case of deserters from vessels mentioned in the 9th article, whom the consuls are authorized to cause to be arrested, they are expressly directed to apply in writing to the "courts, judges and officers, competent" to make the arrests; meaning the courts, judges and officers of the country where the consuls reside. Besides, if power could be given to consuls to appoint officers to execute their decisions, these officers must of course have their fees of compensation to be paid by one or other of the parties: but the 12th article declares that the consular judgments shall be "*without costs*."—To these observations I subjoin the deliberate opinions of two respectable lawyers,

Mr. Harrison, of New York, and Mr. Bradford, the late attorney general of the United States.

"I have considered the 12th article of the convention between his late most christian majesty and the United States of America, and also the act of Congress concerning consuls and viceconsuls, as far as it prescribes the duty of marshals of the United States; and it is my opinion that the marshals are not bound by law to execute any sentence of a French consul, arising under the said article.

"RICHARD HARRISON, Attorney U. S.
for the New York district.

"New York, March 6, 1794."

"I have considered the convention and act above referred to, and I perfectly coincide in the opinion given by the attorney of the United States for the district of New York.

"WM. BRADFORD.

"Philadelphia, March 14, 1794."

The other complaint under this head is, that the judges who are charged (by an act of Congress) to issue warrants of arrest against deserters from French vessels have required the *original* ship's roll to prove that the men alleged to have deserted were a part of the crew, in contempt of the 5th article, which admits in the tribunals of both countries copies certified by the consul.

If we look at the 9th article of the consular treaty we shall see that the consuls who demand the arrests of deserters from vessels of their nation, must prove "by an exhibition of the registers of the vessel or ship's roll, that those men were a part of the crew." It is apparent that the original roll, and not a copy is here referred to; nor indeed is the contrary pretended; but it is said that the 5th article admits certified consular copies as evidence in the courts of both nations. But the 5th article appears to have no relation to the subject of the 9th.—It stipulates that "the consuls respectively shall have the exclusive right of receiving in their chancery, or on board of vessels, the declarations and all other acts, which the captains, masters, crews, passengers and merchants of their nation may choose to make there, even their testaments and other disposals by last will; and the copies of *the said acts* duly

authenticated by the said consuls, under the seal of their consulate, shall receive faith in law, equally as their originals would." The ship's roll (or shipping paper) of a vessel's crew is not an act to be done before the consul, but the evidence of a private agreement between the captain of a vessel and his crew; and when he alleges that any of them have deserted, the 9th article requires this original evidence of the fact to be produced to the judge as the ground on which he shall issue his warrant to arrest them. And this is the construction put on this article by the judges; and for aught I know, without any diversity of opinion. The difference alleged by Mr. Fauchet in one of his letters to the Secretary of State, I have inquired into; and find he was under a mistake.—And the mistake arose probably from this circumstance, that when from the information of the consul there was danger that the deserter would wholly escape unless instantly apprehended, the judge has issued his warrant to arrest and bring before him the alleged deserter, but when brought, that judge has not committed the man, or delivered him to the consul, unless the original roll was produced to prove him one of the ship's crew.

As to the outrage against Mr. Fauchet by the Africa man of war, in attempting to seize him and his papers within the jurisdiction of the United States, and capt. Home's insult on their authority, I do not know what measures more efficacious could have been taken by the Executive than those which were adopted, to obtain satisfaction. After waiting a reasonable time for explanations on the part of capt. Home, and of Mr. Moore, the English vice-consul, and receiving none, the President revoked the exequatur of the vice-consul, and desired the governor of Rhode Island, where the Africa had been lying, to communicate to capt. Home the demand of the President—that he should immediately remove from a station within the jurisdiction of the United States, where he had violated their rights; and further to make known to him, that in forty-eight hours after the requisition should be communicated to him all intercourse between the citizens of the United States and his ship would be forbidden.

It is very true that the exequatur of the British vice-consul was withdrawn expressly for his knowingly transmitting to the governor of Rhode Island a most insulting

letter from captain Home : because although he was on board the Africa when the attempt was made against Mr. Fauchet, the President had no evidence of his co-operation. The minister of the United States in London, was directed to represent to that court the conduct of capt. Home, and to demand his exemplary punishment. It was not to be expected that he would be judged unheard ; and consequently much delay must have ensued. From her station on the coast of North America, the Africa went to the West Indies. Seeing some time since, by an article in the newspapers that the Africa was returned to England, our minister in London was reminded of this affair, that the demand of satisfaction might be renewed.

Although the subject of M. De la Croix's 3d and last complaint (the British treaty) has been already discussed, allow me here to make a few remarks. He says " it will be easy to prove that the United States, in this treaty have knowingly and evidently sacrificed their connexions with the Republick, and the most essential and least contested prerogatives of neutrality."—The *reverse* of what the minister considers so *easy to prove*, we think has been *demonstrated*. Our legally binding connexions with France we always considered as being formed by our treaties : and we say with confidence that we have not " knowingly" violated these in a single article. If individuals have at any time infringed them, the government has been sincere and diligent in its endeavours to redress the wrong. If the ties of affection, of warm enthusiastick friendship, have been weakened, the cause is to be sought for, not in the acts of the American government, which have been constantly directed to the preservation of our peace with all nations. These ties did not depend on treaties. It was our friendship to France, contracted during *our* revolution, and our partiality for the cause of liberty and self government for which she engaged in *her own*, that made us endure numerous injuries almost without complaining. We were not willing to ascribe to the Republick, the outrages of her ministers against the laws, the sovereignty, and the dignity of the United States, or the exceptionable style of their communications. Even when for such flagrant aggressions, often repeated, we desired the recall of one of her ministers, it was done in the most soothing language ; and in the mean time, lest the interest of the Re-

publick should suffer he was permitted to exercise his functions in all cases in which those interests could be affected. When his successor arrived he officially requested that the offending minister might be apprehended, that he might be sent to France : but the government, satisfied by his removal, declined the measure. Some irritations were experienced from that successor—What sensations have been produced by Mr. Adet's notes your own feelings, on the perusal, will enable you to judge. If he intended to excite the general indignation of our citizens, he is not disappointed : but it is presumed this was not the object. After an exhibition of complaints in a style so exceptionable, he could add but one more improper act, that of publishing his notes in the newspapers : he had scarcely transmitted them to the Executive, before he forwarded them to the printer for publication.

From the foregoing statement we trust it will appear, that there has been no attempt in the government of the United States to violate our treaty or weaken our engagements with France : that whatever resistance it has opposed to the measures of her agents, the maintenance of the laws and sovereignty of the United States, and their neutral obligations, have rendered indispensable. That it has never acquiesced in any acts violating our rights or interfering with the advantages stipulated to France, but on the contrary has opposed them by all the means in its power : that it has withheld no succours from France that were compatible with the duties of neutrality to grant : that as well by their independent political rights as by the express provisions of the commercial treaty with France the United States were at full liberty to enter into commercial treaties with any other nation and consequently with Great Britain : that no facts manifesting a partiality to that country, have been, and I add, that none such can be produced.

Of the propriety and justness of these conclusions you will endeavour to satisfy the French government : and conscious of the rectitude of our own proceedings, during the whole course of the present war, we cannot but entertain the most sanguine expectations that they will be satisfied. We even hope that this has been already accomplished ; and that you will be saved from the pain of renewing a discussion which the government has entered

upon with regret. Your mission and instructions prove its solicitude to have prevented this necessity, and the sincerity of its present hopes, that your endeavours agreeably to those instructions, "to remove jealousies and obviate complaints, by showing that they are groundless—to restore confidence so unfortunately and injuriously impaired—to explain the relative interests of both countries, and the real sentiments of your own,"—have been attended with success. And as a consequence thereof we rely on the repeal of the decrees and orders which expose our commerce to indefinite injuries, which militate with the obligations of treaties, and our rights as a neutral nation.

I have the honour to be, &c.

TIMOTHY PICKERING.

No. 1.

TRANSLATION.

Note from Mr. Adet, Minister Plenipotentiary of the French Republick, to Mr. Pickering, Secretary of State. Legation at Philadelphia.

THE undersigned minister plenipotentiary of the French Republick, in conformity to the orders of his government, has the honour of transmitting to the Secretary of State of the United States, a resolution taken by the executive directory of the French Republick, on the 14th Messidor, 4th year, [July 2. 1796] relative to the conduct which the ships of war of the Republick are to hold towards neutral vessels. The flag of the Republick will treat the flag of neutrals in the same manner as they shall suffer it to be treated by the English.

The sentiments which the American government have manifested to the undersigned minister plenipotentiary, do not permit him to doubt, that they will see, in its true light, this measure as far as it may concern the United States; and that they will also feel, that it is dictated by imperious circumstances, and approved by justice.

Great Britain during the war she has carried on against the Republick, has not ceased using every means in her power to add to that scourge, scourges still more terrible: she has used the well known liberality of the French nation, to the detriment of that nation. Knowing how faith-

ful France has always been in the observance of her treaties—knowing that it was a principle of the Republick to respect the flags of all nations, the British government, from the beginning of the war, has caused neutral vessels, and in particular American vessels, to be detained ; taken them into their ports, and dragged from them Frenchmen and French property. France, bound by a treaty with the United States, could find only a real disadvantage in the articles of that treaty which caused to be respected as American property, English property found on board American vessels. They had a right, under this consideration, to expect that America would take steps in favour of her violated neutrality. One of the predecessors of the undersigned, in July, 1793, applied on this subject to the government of the United States—but he was not successful. Nevertheless the National Convention, who by their decree of the 9th May, 1793, had ordered the seizure of enemy's property on board neutral vessels, declaring at the same time, that the measure should cease when the English should respect neutral flags, had excepted on the 23d of the same month, the Americans from the operation of this general order. But the Convention was obliged soon to repeal the law which contained this exception, so favourable to Americans ; the manner in which the English conducted themselves, the manifest intention they had to stop the exportation of provisions from America to France, rendered it unavoidable.

The National Convention, by this, had restored the equilibrium of neutrality which England had destroyed ; had discharged their duty in a manner justified by a thousand past examples, as well as by the necessity of the then existing moment. They might, therefore, before they revoked the orders they had given to seize enemy's property on board American vessels, have waited till the British government had first definitively revoked the same order ; a suspension only of which was produced by the embargo laid by Congress the 26th March, 1794. But as soon as they were informed, that under orders of the government of the United States, Mr. Jay was directed to remonstrate against the vexatious measures of the English, they gave orders, by the law of the 13th Nivose, 3d year, to the ships of war of the Republick, to respect American vessels, and the committee of publick safety, in their explanatory re-

solve of the 14th of the same month, [January 4, 1795] hastened to sanction the same principles. The National Convention and the committee of publick safety, had reason to believe that this open and liberal conduct would determine the United States to use every effort to put a stop to the vexations practised against their commerce, to the injury of the French Republick. They were deceived in this hope; and though the treaty of friendship, navigation and commerce between Great Britain and the United States, had been signed six weeks before France adopted the measure I have just spoken of, the English did not abandon the plan they had formed, and continue to stop and carry into their ports all American vessels bound to French ports or returning from them.

This conduct was the subject of a note which the undersigned addressed on the 7th Vendemiaire, 4th year [29th September, 1795, O. S.] to the Secretary of State.—The remonstrances which it contained were founded upon the duties of neutrality, upon the principles which Mr. Jefferson had laid down in his letter to Mr. Pinckney, dated the 13th September, 1793; yet this note has remained without an answer, though recalled to the remembrance of the Secretary of State, by a despatch of the 9th Germinal, 4th year [29th March, 1796, O. S.]; and American vessels bound to French ports, or returning from them, have still been seized by the English. Indeed more; they have added a new vexation to those they had already imposed upon Americans: they have impressed seamen from on board American vessels, and have thus found the means of strengthening their crews at the expense of the Americans, without the government of the United States having made known to the undersigned, the steps they had taken to obtain satisfaction for this violation of neutrality, so hurtful to the interests of France, as the undersigned had set forth in his despatches to the Secretary of State, of the 9th Germinal, 4th year (29th March, 1796, O. S.) 19th Germinal, (8th April, 1796,) and 1st Floreal (20th April, 1796) which have remained without an answer.

The French government, then, finds itself, with respect to America at the present time, in circumstances similar to those of the year 1793; and if it sees itself obliged to abandon, with respect to them and neutral powers in general, the favourable line of conduct it had pursued, and

to adopt different measures, the blame should fall upon the British government;—it is their conduct which the French government has been obliged to follow.

The undersigned minister plenipotentiary conceives it his duty to remark to the Secretary of State, that the neutral governments, or the allies of the Republick, have nothing to fear as to the treatment of their flag by the French, since, if keeping within the bounds of their neutrality, they cause the rights of that neutrality to be respected by the English, the Republick will respect them. But if through weakness, partiality, or other motives, they should suffer the English to sport with that neutrality, and turn it to their advantage, could they then complain, when France, to restore the balance of neutrality to its equilibrium, shall act in the same manner as the English? no, certainly; for the neutrality of a nation consists in granting to belligerent powers, the same advantages; and that neutrality no longer exists, when, in the course of the war, that neutral nation grants to one of the belligerent powers, advantages not stipulated by treaties anterior to the war; or suffers that power to seize upon them. The neutral government cannot then complain, if the other belligerent power desires to enjoy advantages which its enemy enjoys, or, if it avails itself of them; otherwise that neutral government would deviate, with respect to it, from the line of neutrality, and would become its enemy.

The undersigned minister plenipotentiary, thinks it useless further to develop these principles. He does not doubt that the Secretary of State feels all their force, and that the government of the United States will perfectly maintain a neutrality which France has always respected, and will always respect when her enemies do not make it turn to her detriment.

The undersigned minister plenipotentiary embraces this opportunity of reiterating to the Secretary of State, the assurance of his esteem; and informs him at the same time, that he will cause this note to be printed, in order to make publicly known the motives which, at the present juncture, influence the French Republick.

Done at Philadelphia, 6th Brumaire, 5th year of the French Republick, one and indivisible, (27th Oct. 1796, O. S.)

P. A. ADET.

No. 2.

Extract from the Register of the Resolves of the Executive Directory, of the 14th Messidor, 4th year of the French Republick, one and indivisible. July 2, 1796.

THE executive directory, considering that, if it becomes the faith of the French nation to respect treaties or conventions which secure to the flags of some neutral or friendly powers, commercial advantages, the result of which is to be common to the contracting powers; those same advantages, if they should turn to the benefit of our enemies, either through the weakness of our allies, or of neutrals, or through fear, through interested views, or through whatever motives, would in fact warrant the inexecution of the articles in which they were stipulated—Decrees as follows:

ALL neutral or allied powers shall, without delay, be notified, that the flag of the French Republick will treat neutral vessels, either as to confiscation, as to searches, or capture, in the same manner as they shall suffer the English to treat them.

The Minister of Foreign Relations is charged with the execution of the present resolve, which shall not be printed.

A true copy, CARNOT, President.

By the Executive Directory: The Secretary General.
LAGARDE.

True copy: The Minister of Foreign Affairs.
CH. DELACROIX.

True copy: The Minister Plenipotentiary of the French Republick, near the United States of America.

P. A. ADET.

No. 3.

Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, November 1, 1796.

SIR,—I have the honour to acknowledge the receipt of your note of the 27th ultimo. covering a decree of the

executive directory of the French Republick, concerning the commerce of neutral nations.

This decree makes no distinction between neutral powers who can claim only the rights secured to them by the law of nations, and others between whom and the French Republick, treaties have imposed special obligations. Where no treaties exist, the Republick, by seizing and confiscating the property of their enemies found on board neutral vessels, would only exercise an acknowledged right under the law of nations.—If towards such neutral nations, the French Republick has forbore to exercise this right, the forbearance has been perfectly gratuitous. The United States, by virtue of their treaty of commerce with France, stand on different ground.

In the year 1778, France voluntarily entered into a commercial treaty with us, on principles of perfect reciprocity ; and expressly stipulating *that free ships should make free goods* ; that is, if France should be at war with any nation with whom the United States should be at peace, the goods (except contraband) and the persons of her enemies (soldiers in actual service, excepted) found on board the vessels of the United States, were to be free from capture. That on the other hand, if the United States should engage in war with any nation, while France remained at peace, then the goods (except contraband) and the persons of our enemies (soldiers in actual service, excepted) found on board French vessels were also to be free from capture. This is plainly expressed in the twenty-third article of that treaty ; and demonstrates that the reciprocity thereby stipulated was to operate at *different periods* : that is, at one time in favour of one of the contracting parties, and of the other, at another time. At the present time, the United States being at peace, they possess, by the treaty, the right of carrying the goods of the enemies of France, without subjecting them to capture.—But what do the spirit of the decree of the executive directory, and the current of your observations require ? that the United States should now gratuitously renounce this right. And what reason is assigned for denying to us the enjoyment of this right ? your own words furnish the answer. “ *France bound by treaty to the United States, could find only a real disadvantage in the articles of that treaty which caused to be respected as American property, English property*

found on board American vessels." This requisition, and the reason assigned to support it, alike excite surprise. The American government, sir, conscious of the purity of its intentions, of its impartial observance of the laws of neutrality, and of its inviolable regard to treaties, cannot for a moment admit that it has forfeited the right to claim a reciprocal observance of stipulations on the part of the French Republick; whose friendship, moreover, it has ever cultivated with perfect sincerity. This right, formerly infringed by a decree of the National Convention, was recognised anew by the repeal of that decree. Why it should be again questioned, we are at a loss to determine. We are ignorant of any new restraints on our commerce by the British government: on the contrary, we possess recent official information *that no new orders have been issued*. The captures made by the British, of American vessels having French property on board, are warranted by the law of nations. The force and operation of this law was contemplated by France and the United States when they formed their treaty of commerce; and their special stipulation on this point was meant as an exception to an universal rule. Neither our weakness nor our strength have any choice, when the question concerns the observance of a known rule of the law of nations.

You are pleased to remark, that the conduct of Great Britain in capturing American vessels, bound to and from French ports had been the subject of a note which on the 29th of September, 1793, you addressed to the Secretary of State; but which remained without an answer. Very sufficient reasons may be assigned for the omission. The subject, in all its aspects, had been already officially and publicly discussed; and the principles and ultimate measures of the United States, founded on their indisputable rights, were as publicly fixed. But if the subject had not, by the previous discussions, been already exhausted, can it be a matter of surprise that there should be a repugnance to answer a letter containing such insinuations as these? "It must then be clear to every man who will discard prejudices, love, hatred, and, in a word, all the passions which lead the judgment astray, that the French Republick would have a right to complain, if the American government suffered the English to interrupt the commer-

cial relations which exist between her and the United States; if by a *perfidious condescension* it permitted the English to violate a right which it ought *for its own honour and interest* to defend; if under the *cloak of neutrality*, it presented to England a poignard to cut the throat of its faithful ally; if, in fine, *partaking in the tyrannical and homicidal rage of Great Britain*, it concurred to plunge the people of France into the horrors of famine." For the sake of preserving harmony, silence was preferred to a comment upon these insinuations.

You are also pleased to refer to your letters of March and April last, relative to impresses of American seamen by British ships; and complain that the government of the United States had not made known to you the steps they had taken to obtain satisfaction. This, sir, was a matter which concerned only that government. As an independent nation, we were not bound to render an account to any other, of the measures we deemed proper for the protection of our own citizens; so long as there was not the slightest ground to suspect that the government ever acquiesced in any aggression.

But permit me to recur to the subject of the decree of the executive directory.

As before observed, we are officially informed, that the British government have issued no new orders for capturing the vessels of the United States. We are also officially informed, that on the appearance of the notification of that decree, the minister of the United States at Paris, applied for information "whether orders were issued for the seizure of neutral vessels, and was informed that no such order was issued, and further, that none such would be issued in case the British did not seize our vessels." This communication from the minister of the United States at Paris, to their minister in London, was dated the 28th of August. But the decree of the directory bears date the 14th Messidor, answering to the second of July. These circumstances, together with some observations in your note, leave the American government in a state of uncertainty of the real intentions of the government of France. Allow me then to ask, whether in the actual state of things, our commerce is considered as liable to suffer any new restrictions on the part of the French Republick? Whether the restraints now exercised by the

British government are considered as of a nature to justify a denial of those rights which are pledged to us by our treaty with your nation? Whether orders have been actually given to the ships of war and privateers of the French Republick, to capture the vessels of the United States? And what, if they exist, are the precise terms of these orders?

These questions, sir, you will see are highly interesting to the United States. It is with extreme concern that the government finds itself reduced to the necessity of asking an explanation of this nature: And if it shall be informed that a new line of conduct is to be adopted towards this country, on the ground of the decree referred to, its surprise will equal its regret, that principles should now be questioned which, after repeated discussions both here and in France, have been demonstrated to be founded, as we conceive, in the obligations of impartial neutrality, of stipulations by treaty, and of the law of nations. I hope, sir, you will find it convenient by an early answer, to remove the suspense in which the government of the United States is now held, on the questions above stated.

I shall close this letter by one remark on the singularity of your causing the publication of your note. As it concerned the United States, it was properly addressed to its government; to which alone pertained the right of communicating it, in such time and manner as it should think fit, to the citizens of the United States.

I am, sir, with great respect, &c.

TIMOTHY PICKERING.

No. 4.

TRANSLATION.

The Minister Plenipotentiary of the French Republick near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 13 Brumaire, 5th year of the French Republick, one and indivisible (3d Nov. 1796, O. S.)

SIR,—I hasten to acknowledge the receipt of your letter dated 1st November, which was delivered to me

last night, and which I find this morning in the newspapers.

I shall have the honour in a few days of furnishing you with more ample information upon the object of which it treats ; and I pray you will permit me to confine myself to remark to you that the article of the executive directory which I had the honour to notify to you, bears no mark of similitude with the supposed order in question in the letter from Mr. Monroe to Mr. Rufus King, which you cite, and which was made known to me by the newspapers.

Accept, sir, the assurance of my respectful esteem.

P. A. ADET.

No. 5.

Note from Mr. Adet, Minister Plenipotentiary of the French Republick, to Mr. Pickering, Secretary of State of the United States. Legation at Philadelphia.

THE undersigned minister plenipotentiary of the French Republick, now fulfils to the Secretary of State of the United States, a painful but sacred duty. He claims, in the name of American honour, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people, the freest upon earth : In a word, he announces to the Secretary of State the resolution of a government terrible to its enemies, but generous to its allies.

It would have been pleasing to the undersigned minister plenipotentiary to have only to express, on the present occasion, the attachment which his government bears to the American people, the vows which it forms for their prosperity, for their happiness. His heart therefore, is grieved at the circumstances, which impose upon him a different task. With regret he finds himself compelled to substitute the tone of reproach for the language of friendship. With regret also his government has ordered him to take that tone ; but that very friendship has rendered it indispensable. Its obligations sacred to men, are as sacred to governments ; and if a friend offended by a friend, can justly complain, the government of the United

States, after the undersigned minister plenipotentiary shall have traced the catalogue of the grievances of the French Republick, will not be surprised to see the executive directory, manifesting their too just discontents.

When Europe rose up against the Republick at its birth, menaced it with all the horrors of war and famine ; when on every side the French could not calculate upon any but enemies, their thoughts turned towards America : A sweet sentiment then mingled itself with those proud sentiments which the presence of danger, and the desire of repelling it, produced in their hearts. In America they saw friends. Those who went to brave tempests and death upon the ocean, forgot all dangers, in order to indulge the hope of visiting that American continent, where, for the first time, the French colours had been displayed in favour of liberty. Under the guaranty of the law of nations, under the protecting shade of a solemn treaty, they expected to find in the ports of the United States, an asylum as sure as at home ; they thought, if I may use the expression, there to find a second country. The French government thought as they did. Oh hope, worthy of a faithful people, how hast thou been deceived ! So far from offering the French the succours which friendship might have given without compromising it, the American government, in this respect, violated the letter of treaties.

The 17th article of the treaty of amity and commerce of 1778, states, that French vessels of war, and those of the United States, as well as those which shall have been armed for war by individuals of the two states, may freely conduct where they please, the prizes they shall have made upon their enemies, without being subject to any admiralty or other duty ; without the said vessels, on entering into the harbours or ports of France, or of the United States, being liable to be arrested or seized, or the officers of those places taking cognizance of the validity of the said prizes ; which may depart and may be conducted freely and in full liberty to the places expressed in their commissions, which the captains of said vessels shall be obliged to show : And that on the contrary, no shelter or refuge shall be given to those who shall have made prizes upon the French or Americans ; and that if they should be forced by stress of weather or the danger of the sea, to enter, they shall be made to depart as soon as possible.

In contempt of these stipulations, the French privateers have been arrested in the United States, as well as their prizes; the tribunals have taken cognizance of the validity or invalidity of these prizes. It were vain to seek to justify these proceedings, under the pretext of the right of vindicating the compromised neutrality of the United States. The facts about to be stated, will prove that this pretext has been the source of shocking persecutions against the French privateers, and that the conduct of the federal government, has been but a series of violations of the 17th article of the treaty of 1778.

On the 4th of August, 1793, a circular letter of the Secretary of the Treasury, was sent to all the collectors of the customs.—It accompanied regulations adopted by the President, prohibiting all armaments in favour of the belligerent powers. These regulations immediately acquired the force of law, and the agents of the government, and the tribunals, concurred in their execution. They gave them a retrospective effect, and caused to be seized in the ports of the United States, the armed vessels and prizes which had come in prior to that time. But even before these regulations, adopted by the President, had established any rule whatever upon the prohibition of armaments, the tribunals had already, by order of the government, assumed the cognizance of prizes made by French vessels, (No. 1.) One of the predecessors of the undersigned, protested against this, but in vain. The tribunals still continued their prosecutions.

On the 3d of December, 1793, the President asked of Congress, a law confirming the measures contained in the letter from the Secretary of the Treasury, above mentioned (No. 2.) This law was passed the 5th June, 1794. What was its result? In consequence of this law, the greater part of the French privateers have been arrested, as well as their prizes; not upon formal depositions, not upon established testimony, not upon a necessary body of proofs, but upon the simple information of the consul of one of the powers at war with the French Republick; frequently upon that of sailors of the enemy powers; sometimes according to the orders of the governours, but often upon the demand of the district attorneys, who assert, upon principles avowed by the government, (No. 3.) that their conviction was sufficient to authorize them.

without complaint or regular information, to cause the privateers to be prosecuted in virtue of the law above mentioned, (No. 4.)

When the ministers of the Republick have asked justice of the government, for the vexations experienced by the privateers, in contempt of the 17th article of the treaty, they have never been able to obtain satisfaction.

Thus, when on the 9th Fructidor, 3d year (26th Aug. 1794,) the predecessor of the undersigned, addressed a complaint to the government, on this subject, the Secretary of State answered, on the 3d September, 1794. by a phrase indicative of delay.

Thus, when the same minister, on the 27th Vendemiaire, 3d year, (17th October, 1794,) reminded the Secretary of State, of the means he had proposed to him, for putting an end to the measures adopted against the French privateers; when he caused him to see that this means, which consisted in requiring security from those who claimed the prizes as illegal, would prevent the enemies of the Republick from instituting so many suits of which they themselves perceived the injustice; he obtained no other answer than that his proposition relative to securities was inadmissible.

When on the 13th Floreal, 3d year, the same minister expressed himself in these terms, in a letter to the Secretary of State: " You have alleged, sir, that the Executive of the United States cannot interfere in the affairs of which the tribunals have taken cognizance. In admitting this objection for all the business now in suit, I do not the less think that your government could, by general measures, bring back the jurisdiction of the American tribunals, concerning prizes made by our vessels within the limits prescribed by our treaties, which make part of the supreme law of the land: It might make known that the facility with which your courts of admiralty admit, without distinction, all the chicanery which our enemies create against us, in the present war, is evidently contrary to the spirit of the treaty." The government paid no attention to these reflections, and the answer of the Secretary of State, merely notices the particular fact which had occasioned the note of citizen Fauchet.

What was the undersigned minister plenipotentiary able to obtain in the affair of the *Casius* and of the *Vengeance*?—Nothing.

The government of the United States must have seen, however, by the claims which the ministers of the Republick addressed to it, and by the great number of facts, of which it has had a knowledge, how much the execution of the measures of the President, and of the law of the 5th of June, 1794, was contrary to the 17th article of the treaty; how much the agency of the tribunals, who ought not to have any cognizance of the validity or invalidity of prizes, tended to annul that article, and to deprive the Republick of the advantage which it assures to her. In fact, was it not evident, that when the powers at war with the Republick had the privilege, in virtue of the law of the 5th of June, 1794, of causing to be arrested the privateers and their prizes; of detaining them in the ports of the United States; of ruining them by considerable costs, by the excessive expenses which they occasioned them, they drew from that privilege an immense advantage, to the detriment of France. Doubtless it was of little import to them, that sometimes the privateers obtained justice, in the last resort, if they detained the privateer for a length of time, and if they by that means sheltered from their pursuit the commerce of the enemy of France. The neutrality of the United States in this case, was altogether to their advantage; and the federal government, on seeing this state of things, should, out of respect to its neutrality and to treaties, have solicited from the Congress the means of conciliating the duties of the former, with the obligations of the latter.

The government very well knew how to solicit the law of the 5th of June, 1794, when that law was to bear on France alone; when it gave to the tribunals a right which has been abused, and which enables them to decide upon prizes: why, on seeing the inconveniences of this law, has it not endeavoured to remedy them? Should it wait to be solicited on this head? Should it not anticipate all claims, and when these were presented by the ministers of the Republick, should it not do justice?

Besides, if the government had been impartial, as it has pretended to be, it would not have adopted that slow and circuitous mode, so favourable to the enemies of France, for deciding the cases relative to its neutrality; it would have preferred the measures proposed by Mr. Jefferson, on the 25th of June, 1793, to the minister of the Repub-

lick : These measures were simple ; they were in conformity with the duties of neutrality, and the interests of the Republick.

The federal government had decided questions which interested its neutrality, upon informations furnished by the state governours and the agents of the Republick ; the prizes remained in the hands of the French consul until this decision took place ; the stipulations of the 17th article of the treaty of 1778 were not violated ; and the government at the same time satisfied the obligations of duty and justice. In vain would it say that it had not this power. Notwithstanding the law of the 5th of June, 1794, giving to the tribunals the right of taking cognizance of cases in which neutrality had been violated, did not the President on the 21st of June, 1794, decide that the ship *William*, taken out of the limits of the waters of the United States, should be delivered to the captor ; and on the 3d July, 1794, did he not decide that the *Pilgrim* had been taken in the waters of the United States, and that, of course, she should be given up to the owners ? In these cases the President not only decided on matters, the cognizance of which had been consigned to the tribunals, but likewise gave a retrospective effect to his own decision upon the protecting line of the United States, which was not notified to the minister of the Republick till the 8th of November, 1793.

Not satisfied with permitting the 17th article of the treaty to be violated by its agents and tribunals, the federal government also suffered the English to seize upon the advantages interdicted to them by that article. They armed in the ports of the United States, brought in and repaired their prizes, and, in a word, found in them a certain asylum.

Thus the English privateer *Trusty*, captain Hall, was armed at Baltimore to cruise against the French, and sailed, notwithstanding the complaints of the consul of the Republick. At Charleston, one Bermudian vessel, several English vessels, and one Dutch vessel, from the 24th of May to the 6th of June, 1793, took in cannon for their defence, and sailed without opposition.

What answer did the government give to the representations of the minister of the French Republick, in this respect ? It said, that these vessels sailed too suddenly :

that it was not able to cause them to be stopped.—But the treaty was not less violated. Some inhabitants of the United States had aided in these illegal armaments : What measures were taken against them? Was any search made to discover them, to prosecute them? Never: and yet the government of the United States no sooner learnt that, in consequence of an implied stipulation which the treaty of Versailles seemed to contain, the French were arming in the ports of the United States, than the most energetick orders were sent for stopping these armaments. Even citizens of the United States were imprisoned, upon suspicion that they had participated in them. The minister cannot omit citing here the following passage of a letter from the Secretary of State, Edmond Randolph, to Mr. Hammond, dated June 2, 1794. “On a suggestion that citizens of the United States had taken part in the act, [he speaks of the armaments in the United States] one who was designated was instantly committed to prison for prosecution: one or two others have been since named and committed in like manner, and should it appear that there were still others, no measures would be spared to bring them to justice.” What more could the American government do in favour of the English, if they had a similar treaty to that with France, and had been sole possessors of the advantages assured to her by positive stipulations?

However, in contempt of these very stipulations, the *Argonaut*, an English ship of war, in January, 1795, conducted into Lynnhaven bay the French corvette *L’Esperance*, which she had taken upon the coast; she there had her repaired, in order to send her upon a cruise. Letters were in consequence written by the Secretary of State to the governour of Virginia, and to Mr. Hammond. What was the result? Nothing. On the 29th of May, 1795, the federal government had not yet done any thing positive, as to the acts which produced the complaint of the minister of the Republick. The Secretary of State announced, “that these facts shall be examined, and that, if they are verified, the federal government will not be in the rear of its obligations.” To that has the reparation demanded by the Republick been limited.

What are we to think of these delays, when we see the officers of the government acting with so much activity.

against the French, on the slightest suspicion that they have violated the neutrality.—when in his letter of 29th April, 1794, the Secretary of State answers the complaints of the English minister—“We have received no intelligence of the particular facts to which you refer: But to prevent all unnecessary circuitry, in first inquiring into them, and next transmitting to this city the result, the proper instructions will be given to act, without further directions.” How did the federal government conduct towards the autumn of 1794? The English frigate *Terpsichore* took the privateer *La Montagne* into the port of Norfolk. The French vice-consul claimed the execution of the treaty, of the governour of Virginia: The governour answered him, that he would have the necessary investigation made, and would afterwards take the proper measures. The predecessor of the undersigned then interposed with the federal government: and the Secretary of State assured him that he would write to the governour of Virginia, to have justice rendered. But this justice was limited to investigations made with such slowness, that five months after, this affair was not finished; and on the 24th of February, 1795, the Secretary of State contented himself with sending to the predecessor of the undersigned, the despatches of the lieutenant governour, dated Oct. 10, 1794, by which he announces, that he ordered the commandant of the militia of Norfolk to make the necessary inquiries, for enabling the executive of Virginia to render to the Republick the justice it had a right to expect. The result of these inquiries is not known. However, the fact about which the minister Fauchet complained to the Secretary of State, was notorious, and painful researches were not necessary to convince himself of it. Do we not find in this proceeding a formal desire to elude the treaties, and to favour the English?

If the government of the United States had wished to maintain itself in that impartiality which its duties prescribed, if it had wished freely to execute the treaties, it would not have waited, every time that the English infringed them, for the minister to solicit its justice: Should it not have given instructions so precise, that the governours of the states, and subaltern officers of the federal government, might know what duties they had to fulfil, in order to maintain the execution of treaties? Why have the

most energetick orders (such as the Secretary of State, Randolph, mentions) been given, when the support of the neutrality inviolate in favour of the English came in question? Why have the measures taken by the federal government operated with so much slowness, when France was interested? Why, in fine, have the multiplied remonstrances of her ministers never produced the redress of grievances of which they complained?

When the predecessor of the undersigned minister plenipotentiary claimed the execution of the 17th art. of the treaty, interdicting the entry into the American ports of English vessels which should have made prizes upon the French, when he cited this simple and formal stipulation: "On the contrary neither asylum nor refuge shall be given in the ports or harbours of France or of the United States to vessels which shall have made prizes of the French or Americans; and should they be obliged to enter by tempest or danger of the sea, all proper means shall be used to make them depart as soon as possible;" the Secretary of State, in order to avoid shutting the American ports against the English, interpreted this article in their favour. "But it would be uncandid to conceal from you the construction which we have hitherto deemed the true one. The first part of the 17th article relates to French ships of war and privateers entering our ports with their prizes; the second contrasts the situation of the enemies of France, by forbidding such as shall have made prize of the French; intimating from this connexion of the two clauses, that the vessels forbidden are those which bring their prizes with them. It has been considered that this section of the treaty was principally destined to the withholding of protection, or succour, to the prizes themselves; had it been otherwise, it would have been superfluous, to have prohibited [in the 22d article foreign privateers] from selling what they have taken in the ports of the United States."

He said, moreover, in his letter of the 29th of May, 1795—"But on the 3d of August, the President declared his construction of that treaty to be, that no publick armed vessels were thereby forbidden from our waters, except those which should have made prize of the people or property of France, coming with their prizes." But how is it possible to find in the stipulations of the treaty, the sense

given to them by the government of the United States ? This expression of the treaty, "which shall have made prizes," is general, and applies to all capturing vessels, whether they enter the ports of the United States with prizes, or enter them alone, after having made prizes. It is evident, that the government adds to the letter of the treaty in this circumstance ; and is it not astonishing, that it admits a construction of the treaty, when it expects to find a meaning disadvantageous to France, and in other instances opposes all construction, when this would be favourable to the Republick. But has it the right of construing the treaty, of changing, of its own accord, the sense of a clear and precise stipulation, without the consent and concurrence of the other contracting party ? Doubtless not, especially, when, by so doing, it wounds her interests.

The Secretary of State, by the 22d article, pretends to support his construction of the 17th article. What does this 22d article contain ? A prohibition of the enemies of France and of the United States from arming in the respective ports of the two powers, of selling their prizes, or of discharging all or part of their cargo there. This article, therefore, applies to the prizes ; whilst the 17th applies to the capturing vessels. Did it not exist, the enemies of France, or of the United States, might send their prizes into the respective ports of the two powers without conducting them there themselves : The 17th article, containing only a prohibitory arrangement for the capturing vessels, could not prohibit them from doing this. It was necessary then to have recourse to a formal prohibition : Besides, as the vessels which have made prizes on the French or Americans are admitted into the ports of France or of the United States, in cases of tempest or dangers of the sea, they might, in this case, have conceived themselves authorized to dispose of their prizes, to sell them or to discharge their cargoes ; it was necessary therefore to take this right from them in a positive manner ; it was necessary to prevent them from benefitting by a stipulation made in favour of humanity ; this is the end answered by the 22d article, which is not superfluous, as the Secretary of State maintains, but on the contrary, contains a distinct stipulation from that of the 17th. It is then evident from this, that in the cases above cited by

the undersigned, the stipulations of the 17th article have been violated. They have been equally so, by the admission, in sundry ports, of the *Thetis* and *Hussar* frigates, which captured *Le Prevoyance* and *la Raison*, French store-ships, and by admitting in the last instance this same ship *la Raison*, prize to the *Thetis*, into the ports of the United States.

But admitting for a moment the construction gratuitously given by the Secretary of State to the 17th article of the treaty of 1778, this article has not the less been violated, when the *Argonaut*, which had quitted Hampton roads in order to capture *L'Esperance*, was permitted to enter with that prize; when the *Terpsichore* was suffered to bring in the privateer *la Montagne*. In vain were sought, in the resources of a false and subtle logick, the means of excusing such conduct.—The facts speak; and every upright mind, not blinded by passion, will necessarily yield to their evidence. Yet the prohibitory stipulation of the admission of prizes made by her enemies, is the only advantage which France expected to enjoy, after having wrought and guarantied the independence of the United States, at a time when she might, as the price of that very independence, have granted them less liberal conditions.

These wrongs of the American government towards the Republick, just stated by the undersigned minister plenipotentiary, will soon be aggravated by new ones. It was a little matter only to allow the English to avail themselves of the advantages of our treaty; it was necessary to assure these to them by the aid of a contract which might serve at once as a reply to the claims of France, and as peremptory motives for refusals, the true cause of which it was requisite incessantly to disguise to her under specious pretexts.

Such was the object of Mr. Jay's mission to London; such was the object of a negotiation, enveloped from its origin in the shadow of mystery, and covered with the veil of dissimulation. Could the executive directory have any other idea of it, on examining its issue; on seeing all the efforts made by the American government to conceal the secret from every eye.

In his message to the Senate of the 16th April, 1794, the President declared that Mr. Jay was sent to London only

to obtain a redress of the wrongs done to the United States ; at the same time the Secretary of State communicated to the predecessor of the undersigned a part of the instructions to Mr. Jay, reminding him of the *intention of the American government not to deviate from its engagements with the Republic of France*. The French minister, deceived by this communication, contributed ingenuously to deceive his government. The American minister in France removed the fears of the French government as to the mission of this envoy extraordinary, and represented it as the only means of obtaining indemnification for the losses which the American commerce had sustained. What has this negotiation produced ? A treaty of amity and commerce, which deprives France of all the advantages stipulated in a previous treaty.

In fact, all that could render the neutrality profitable to England and injurious to France is combined in this treaty. Her commercial relations with the United States are entirely broken, by the abandonment of the modern publick law on contraband, a law which England had consecrated in eleven treaties, and which the Americans had also consecrated in their treaties with France, Holland, Sweden, and Prussia. From the new arrangements adopted by the United States with regard to England, the free carriage of the articles for the equipment and armament of vessels is granted exclusively to that power.

By the 23d article of the treaty of Versailles the United States have the liberty of freely carrying on commerce with the enemies of France. The 24th article of the treaty with Holland, the 10th article of the treaty with Sweden, and the 13th article of the treaty with Prussia, contain the same stipulation. This last article gives even more extensive rights to the United States, by permitting them to carry to the enemies of this power all the articles enumerated in the list of such as are contraband of war, without their being liable to confiscation. But by the 12th article of the treaty of London, the articles for arming and equipping vessels are declared contraband of war. The government of the United States has therefore by this stipulation granted to the English a right which they had refused, in consequence of the modern publick law, to other nations with whom they have made treaties ; that of seizing on board their vessels articles proper for the construc-

tion and equipment of vessels. The English then, according to that, enjoy the exclusive commerce of articles proper for the construction of vessels ; yet prior to the treaty concluded between John Jay and lord Grenville, the United States had the right of carrying on commerce with every power : the partiality of the American government in favour of England has therefore been such, that not only the interests of France but also those of other states have been sacrificed to her.

In vain will it be objected that France, having the right by her treaty of 1778 to enjoy all the advantages in commerce and navigation which the United States have granted to England, is not injured by the stipulations of the treaty of 1794, relative to contraband of war, as they become common to her. But the right secured to her by the second article of the treaty of 1778 does not at all extend to the allies whom the success of her arms, and the just resentment inspired by the ambition of England, have definitively given and shall give to her in Europe. These dispositions change, during the course of the war, the situation of the United States towards England and the belligerent powers allied to France ; the interest of these powers is common to France ; and from the moment that is injured, France is injured also.

After having assured to the English alone the carriage of naval stores, the federal government wished to assure them that of meals ; in a word, it desired to have commerce only with England. Thus it stipulates by the 18th article, that the American vessels laden with grain may be seized under the frivolous pretext, that it is extremely difficult to define the cases wherein provisions, and other articles which are generally excepted, could be classed in the list of contraband of war : thus it stipulates in article 17, that the American vessels may be arrested upon the single suspicion, either that they have merchandise belonging to the enemy, or that they carry to him articles contraband of war. The United States in their treaty with France have made stipulations entirely opposite to those just cited : whilst her vessels of war are bound to respect the American flag going to English possessions, the English drag into their ports American vessels going to the ports of France ; subject them to decisions more or less arbitrary ; and often condemn them on account of the name alone of their own-

ers. By which means all the commercial relations between the United States and France are entirely suspended. What American will venture to send vessels into French ports? What commerce will he venture to undertake with the French possessions, when it will be certain that his funds, either in going to, or returning from them, run the greatest hazard? Would he not rather prefer trafficking with a country, to which his vessels might go without being expose to other risks than those of the sea? Would he not prefer Great Britain to France for his speculations? In virtue of the treaty of London, and by the course of things, would not the commerce of the United States pass entirely to England during the present war?

After having consented to such conditions, the American government cannot pretend to impartiality; it cannot say that it has maintained an equal neutrality between France and England, since it has granted to Great Britain advantages denied to France. But every one of these advantages granted to England was a real injury to the Republick; and if it is not maintained, without sporting with all principles, that a government may consider itself as neutral, in granting to a belligerent power advantages which it refuses to another, it is clear that the government of the United States, after having made its treaty with Great Britain, ceased to be neutral, when it opposed itself to the participation by France, in the favours granted to the English.

In consequence, the undersigned minister plenipotentiary again declares, that the executive directory has just ordered the vessels of war and privateers of the Republick to treat American vessels in the same manner as they suffer the English to treat them.

Were the treaty of London out of the question, the measure the executive directory now takes would not be less conformable to justice. The undersigned minister plenipotentiary has developed to the Secretary of State, in his note of the 6 Brumaire last, [27th of October, 1796] principles which leave no doubt in this respect, and which the answer of the Secretary of State is far from destroying. (No. 5.) But the stipulations of treaties now come to the support of general principles. The Republick calls for the execution of the second article of the treaty of 1778, which says that France and the United States mutually en-

gage not to grant any particular favour, as to navigation or commerce, which shall not immediately become common to the other party. The government of the United States having, by the treaty of London, sacrificed to England the freedom of their flag, the property of the enemies of England, and naval stores, France, by her treaty, is authorized to claim the same advantage, to make use of it, and the United States have no right to complain.

Certainly it would have been more conformable to the designs of France, to her principles, to see the American flag floating without interruption upon the seas, to see the commerce of the United States enjoy that liberty, that freedom, which should belong to neutral nations ; but in order to that it was necessary that the American government should know how to maintain that neutrality ; it was necessary that it preserved it free from violation by Great Britain ; and if now the execution of the measures, which the directory is obliged to adopt, give rise to complaints in the United States, it is not against France they should be directed, but against those men who, by negotiations contrary to the interests of their country, have brought the French government to use the prerogatives granted to the English.

When, after having suffered to be violated the treaties which unite it to France, the government of the United States has associated itself with England, and has rendered its neutrality as useful to that power as it is now injurious to its ancient ally ; could the Republick be silent ? Her outraged generosity, her wounded honour prevented her ; her silence were weakness : and strong in her principles as in her proceedings, she should demand her unacknowledged or forgotten rights.

Thus therefore, as it results from the statement which the undersigned Minister Plenipotentiary has just given :

- 1st. That the 17th article of the treaty of 1778 has been violated ; that in contempt of this article the American tribunals have been permitted to take cognizance of the validity of prizes made by French ships of war and privateers under pretext of original armament or augmentation of armament in the United States, or of capture within the jurisdictional line of the United States ;

2. That the said article 17 has been equally violated by the admission of English vessels in the ports of the United

States which had made prizes on Frenchmen, and by the admission of their prizes ;

The undersigned minister plenipotentiary, in the name, and by orders of the the executive directory, protests against the violation of the 17th article above cited, in contempt of which the American tribunals have taken cognizance of the validity of prizes made by French ships of war, or privateers, under pretext of original armament, or augmentation of armament in the United States ; or of capture within the jurisdictional line ; claims the replevy of all seizures, and the repeal of all other judicial acts exercised on those prizes ; and protests, moreover, against all opposition to the sale of the said prizes.

Further, the undersigned minister plenipotentiary protests against the violation of the 17th article of the treaty of 1778, in contempt of which English vessels, which had made prize on Frenchmen, have been admitted into the ports of the United States ; and declares that the executive directory cannot regard as a just construction of the treaty, the distinction which Mr. Randolph, Secretary of State, has established in his letter of 29th May, 1795, in which he admits only the exclusion of the English vessels which bring in their prizes, and wishes to except from the prohibitory measure, the vessels which after having made prizes, enter the ports of the United States.

The undersigned minister plenipotentiary moreover declares, that the executive directory regards the treaty of commerce concluded with Great Britain as a violation of the treaty made with France in 1778, and equivalent to a treaty of alliance with Great Britain, and that justly offended at the conduct which the American government has held in this case, they have given him orders to suspend from this moment, his ministerial functions with the federal government.

The same cause which for a long time prevented the executive directory from allowing their just resentment to break forth, has also tempered its effects. Neither hatred, nor the desire of vengeance, rapidly succeed to friendship in the heart of Frenchmen ; the name of America still excites sweet emotions in it, notwithstanding the wrongs of its government ; and the executive directory wish not to break with a people whom they love to salute with the appellation of friend.

The undersigned minister plenipotentiary therefore announces that the government of the United States, and the American people are not to regard the suspension of his functions as a rupture between France and the United States, but as a mark of just discontent, which is to last until the government of the United States returns to sentiments and to measures more conformable to the interests of the alliance and the sworn friendship between the two nations.

This alliance was always dear to Frenchmen ; they have done every thing to tighten its bands : The government of the United States, on the contrary, has sought to break them. Scarcely had the war broken out between France and England when America was alone invited to the commerce of the Antilles. All the colonial ports were open to her. Her vessels entered the ports of France without being subjected to higher duties than French vessels. When the English violated the freedom of the neutral flag, the Convention was obliged to use reprisals. They ordered that neutral vessels should be seized by the ships of the Republick. She excepted the Americans from this measure : Forced against her inclination to make it bear on them also, she waited with impatience for the moment when she might return to a conduct more conformable to her sentiments for the United States. Soon she revoked her law relative to the arrest of their vessels. Soon also the committee of publick safety gave orders to respect the American flag. In every circumstance France sought the means of proving to the United States, the sincerity of her friendship. When the federal government complained of the conduct of one of the predecessors of the undersigned ; the French government saw only the complaints of the government of the United States, and immediately gave the most striking reparation.

Let the annals of the French revolution be opened, let the minutes of that august sitting be seen, in which the National Convention received the minister of the United States into its bosom ; the addresses were not studied ; they sprang from hearts full of affection for an allied people ; they breathed the feelings which dictated them ; and the American minister found himself in the midst of his friends. What joy did not the American flag inspire when it waved unfurled in the French senate ? Tender tears trickled from

each eye ; every one looked at it with amazement. There, said they, is the symbol of the independence of our American brethren—behold there the pledge of their liberty ! May victory always attend it—May it lead to glory none but a free and happy people ! These words which escaped from a thousand mouths were the expression of the sentiments of the whole nation. Was not an American to each Frenchman, another Frenchman ?—he was more—he was a friend ; and that sacred name, amidst civil dissensions, was equally respected by all.

What then was done by the government ? It put in question whether it should execute the treaties, or receive the agents of the rebel and proscribed princes (No. 6.) ? It made an insidious proclamation of neutrality ; by its chicaneries it abandoned French privateers to its courts of justice ; it eluded the amicable mediation of the Republick for breaking the chains of its citizens at Algiers (No. 7.) Notwithstanding treaty stipulations, it allowed to be arrested vessels of the state ; it suffered England, by insulting its neutrality, to interrupt its commerce with France ; notwithstanding the faith of treaties, it gave an asylum to these same English, who after having insulted her flag, pillaged her citizens, came also to brave the American people in its ports, and to take a station whence to cruise on a favourable opportunity against the French : It might be said that it applauded their audacity ; all submission to their will, it allowed the French colonies to be declared in a state of blockade, and its citizens interdicted the right of trading to them, (No. 8.) It eluded all the advances made by the Republick for renewing the treaties of commerce, upon a more favourable footing to both nations ; (No. 9.) It excused itself, on the most frivolous pretexts ; whilst it anticipated Great Britain, by soliciting a treaty in which, prostituting its neutrality, it sacrificed France to her enemies, or rather looked upon her as obliterated from the map of the world, it forgot the services that she had rendered it, and threw aside the duty of gratitude, as if ingratitude was a governmental duty.

Alas ! time has not yet demolished the fortifications with which the English roughened this country—nor those the Americans raised for their defence ; their half rounded summits still appear in every quarter, amidst plains, on the tops of mountains. The traveller need not search for the

ditch which served to encompass them ; it is still open under his feet. Scattered ruins of houses laid waste, which the fire had partly respected, in order to leave monuments of British fury, are still to be found.—Men still exist, who can say, here a ferocious Englishman slaughtered my father ; there my wife tore her bleeding daughter from the hands of an unbridled Englishman. Alas ! the soldiers who fell under the sword of the Britons are not yet reduced to dust : the labourer, in turning up his field, still draws from the bosom of the earth their whitened bones ; while the ploughman, with tears of tenderness and gratitude, still recollects that his fields, now covered with rich harvests, have been moistened with French blood ; while every thing around the inhabitants of this country, animates them to speak of the tyranny of Great Britain and of the generosity of Frenchmen ; when England has declared a war of death to that nation, to avenge herself for its having cemented with its blood the independence of the United States.—It was at this moment their government made a treaty of amity with their ancient tyrant, the implacable enemy of their ancient ally. O ! Americans covered with noble scars ! O ! you who have so often flown to death and to victory with French soldiers ! You who know those generous sentiments which distinguish the true warrior ! Whose hearts have always vibrated with those of your companions in arms ! Consult them to-day to know what they experience ; recollect at the same time, that if magnanimous souls with liveliness resent an affront, they also know how to forget one. Let your government return to itself, and you will still find in Frenchmen faithful friends and generous allies.

Done at Philadelphia, the 25th Brumaire, 5th year of the French Republick, one and indivisible (15th November, 1796, O. S.)

P. A. ADET.

Notes in support of the foregoing.

(No. 1.) See letter from citizen Genet to Mr. Jefferson of 22d June, 1793, message from the President, page fifteen of the original French.

(No. 2.) Extract of the President's speech to the House of Representatives, 3d December, 1793.

—As soon as the war in Europe had embraced those powers with whom the United States have the most extensive relations, there was reason to apprehend that our intercourse with them might be interrupted, and our disposition for peace drawn into question by the suspicions too often entertained by belligerent nations. It seemed therefore to be my duty, to admonish our citizens of the consequences of a contraband trade, and of hostile acts to any of the parties; and to obtain, by a declaration of the existing legal state of things, an easier admission of our right to the immunities belonging to our situation. Under these impressions the proclamation which will be laid before you, was issued.

In this posture of affairs, both new and delicate, I resolved to adopt general rules, which should conform to the treaties, and assert the privileges of the United States. These were reduced into a system, which will be communicated to you. Although I have not thought myself at liberty to forbid the sale of the prizes, permitted by our treaty of commerce with France to be brought into our ports, I have not refused to cause them to be restored when they were taken within the protection of our territory, or by vessels commissioned or equipped in a warlike form within the limits of the United States.

It rests with the wisdom of Congress to correct, improve, or enforce this plan of procedure; and it will probably be found expedient to extend the legal code, and the jurisdiction of the courts of the United States to many cases, which, though dependent on principles already recognised, demand some further provisions.

Where individuals shall within the United States, array themselves in hostility against any of the powers at war, or enter upon military expeditions or enterprises within the jurisdiction of the United States, or usurp and exercise judicial authority within the United States, or where the penalties on violations of the law of nations may have been indistinctly marked, or are inadequate, these offences cannot receive too early and close an attention, and require prompt and decisive remedies.

Whatever those remedies may be, they will be well administered by the judiciary, who possess a long established course of investigation, effectual process, and officers in the habit of executing it.

(No. 3.) The undersigned minister plenipotentiary having complained to the Secretary of State, that the attorney of the United States had caused the privateer *La Vengeance* to be arrested, without an affidavit or other authentick testimony; on the 11th Aug. 1795, the Secretary of State sent him an answer which Mr. Troup had addressed to him in the absence of Mr. Harrison, district attorney of New York, in which is this passage—

“As to the suit against the privateer, it was commenced by Mr. Harrison as attorney for the district, upon an official disclosure to him, by the Spanish consul, of the evidence which led him to suppose the privateer had been fitted out and armed within the United States. Mr. Harrison, upon receiving this disclosure, felt himself called upon by considerations which, as a publick officer, he could not resist, to proceed against the privateer under the third section of the act of Congress entitled, An act in addition to the act for the punishment of certain crimes against the United States passed 5th June, 1794. This section works a forfeiture of the privateer, one half to the use of any person who shall give information of the offence, and the other half to the use of the United States. No person having appeared in quality of informer, to institute the suit, Mr. Harrison, according to the course of the common law, filed an information in behalf of the United States solely against the privateer, as you will perceive by the copy of the information already transmitted to you. No law of the United States, and no law or usage of this state required the information to be founded upon any previous affidavit or evidence of the truth of the matters alleged in it. The filing of an information is an act entirely in the discretion of the officer intrusted by law with the power of doing it; and if he should abuse his power, he stands upon the footing of all publick officers who are guilty of malversation in office. In the present instance, Mr. Harrison has acted from the best of his judgment upon the duty of his office, after officially obtaining information from a publick officer, who conceived himself likewise bound by a sense of duty to communicate the information.”

When the undersigned minister plenipotentiary renewed the charge on the 3d Vendemiaire, 4th year (24th Sept. 1795) to the Secretary of State, and still complained

that an affidavit was not required to cause a privateer to be arrested—he [the minister] expressed himself in these words :

“ But I again recur to the assertion that an affidavit is not necessary for ordering the arrest of a vessel.”

“ What is the law, what is the usage, which establishes the prosecution for reparation of an offence, before it be ascertained that it has been committed ; and what certainty then had Mr. attorney ? His opinion ! Upon what is it founded ? The complaint of the Spanish agent, since there was not a single affidavit.”

“ Now, sir, upon mere suspicions which the enemy interest will not fail always to bring forward, the French privateers are to be subjected to seizure ! Such a measure tends to nothing less than to paralyze the seventeenth article of our treaty.”

The Secretary of State, in reply, sent to the undersigned minister plenipotentiary the copy of a letter from Mr. Harrison, of the 3d October, 1795, in which is this remarkable passage—“ In this whole business, however, I have undoubtedly acted from my own opinion, founded upon such evidence as came to my knowledge ; and as in similar cases, I must necessarily, in the first instance, be unacquainted with the opinions and convictions of others, I know of no other rule by which I can be guided, *unless when I am honoured with the directions of the chief executive magistrate.*”

The Secretary of State thus closes his letter on the 16th of October covering that of Mr. Harrison—

“ You will perceive, that whatever may be the event of the suits pending in court concerning her [*the privateer*] and her prize, the publick officer, Mr. Harrison, is supported in his proceedings by the laws and usages of this country, upon such evidence and information as in the case referred to were produced.”

(No. 4.) In virtue of this law, the tribunals were only authorized to decide on cases in which the neutrality of the United States shall have been compromised. Yet these tribunals conceived they had a right to pronounce upon prizes made by the French, in almost an indefinite manner. In the affair of Glass and Gibbs against the ship Betsey, the decision of which has been printed, the Supreme Court pronounced, that the tribunals could de-

cide whether a prize belonged to enemies or to neutrals. in the affair of Joost Janson against the Dutch ship *Vrouw Catharina Magdalena*, it was decided that the naturalization granted in the territories of France to American citizens, during the war, could not give them the right, either of serving or of commanding on board of French privateers; that the prizes made by such, although legally commissioned, were not valid; a distinction is established between a legal and an illegal privateer; it was judged that they had a right to pronounce on this legality, and consequently on the validity of the prizes; it was finally decided, that a prize made at sea with the assistance of an illegal privateer, was void and should be restored.

It was according to these first decisions of the supreme court that the district attorney of Virginia wrote officially, on the 28th March, 1794, to the vice consul at Norfolk—"No vessel can be condemned as prize but in district courts, which are the proper admiralties of the United States." The enemies of France understood, or did not understand this mode; but they availed themselves of it; and in order to cause French privateers to be arrested, they had recourse to the law of 5th June, 1794.

At this period, however, the law had put into the hands of government a sufficient power for preventing the arming and equipping of privateers in the ports of the United States. By the letter of the Secretary of the Treasury of the 4th of August, 1793, the collectors of the customs were authorized, and even required, to visit, in the strictest manner, not only all privateers, but all vessels entering or going out of American ports. The law of 5th June authorized the President to support the exercise of these functions with military force. Of course they did not neglect to visit, with the greatest rigour, all French vessels, privateers and others, during their continuance in the ports of the United States, and at their departure. They did not quit these ports but under the eye and with the express permission of the officers of the government; for it had forbidden the collectors to clear them, if they committed the least violation on the neutrality of the United States, in which case they might be seized and confiscated. Yet, whether they had entered the ports of the United States armed, and also went out armed; or had since been armed for war in French ports, scarcely did one of their

prizes enter but she was arrested by order of the federal court.

The proceedings were instituted and pursued without any of the forms for protecting citizens. As the undersigned minister plenipotentiary has said, the assertion of an enemy of the Republick was sufficient for causing a prize to be seized, often the privateer which had brought her in, and sometimes for the arrest of her captain, no proof was required from the enemy consul who instigated the arrest; he was not obliged to give security for the damages which might result from the procedure, if it were unfounded; the captain was not allowed to remain in possession of his property, on giving security for its value; the prizes were not valued; they simply placed them in the hands of the officers of justice; rarely were they permitted to be sold; and then the sale was made with slowness, and not till the consent of the two parties was obtained. In fine, when after much delay and expense, notwithstanding the shifts of a crafty chicanery, the complainants proved nothing they advanced, the prizes were adjudged to the captors, but indemnification for damages and losses occasioned by this seizure, was refused.

The undersigned minister plenipotentiary knows but two affairs, that of *la Nostra Senora del Carmen*, at Rhode Island, and that of *la Princesa des Asturias*, at New York, where security was given to the party complaining, and where damages and interests were allowed to the captors.—Yet the tribunals have always allowed damages to the captured, when they have declared the prizes illegal. The least pretext was sufficient to obtain from a tribunal the arrest of a prize; it was sufficient to allege that the privateer had taken one or two cannon, one or two barrels of powder, opened some port holes in the territory of the United States.

In the affair of the two prizes of the French privateer *Les citoyens de Marseille*, which entered the port of Philadelphia armed and commissioned, repaired in the same port, and sent out under the eyes of the government, the only thing in question was, that some port holes were pretended to have been opened in the vessel after her departure from Philadelphia; the court of Charleston was of opinion that the holes had been opened, and condemned the two prizes. The superior courts did not adopt this

opinion, and the first sentence was reversed ; but after how long a time, how much care, fatigue, pain, and expense ?

In the affair of the *Princessa des Asturias*, at New York, as will be seen hereafter, only two cannon and a score of fusees were in question ; behold, what is called an armament, behold, how words are abused !

Prizes have been arrested under still more frivolous pretexts. The privateer *La Parisienne* had infringed a revenue law of the United States, she was seized and condemned by the district court. This tribunal, doubtless agreeable to rules prescribed by the law, had restored this vessel to her owners, on making them pay her value. The privateer, after having executed the sentence of the court, went out and made two considerable prizes : one was sent into Charleston and the other into Savannah. They were both arrested at the instance of the English consuls, under the pretext that the tribunal had acted illegally, by restoring the confiscated privateer ;—that notwithstanding this restitution and the payment of her value to the treasurer, she had always remained the property of the United States, and could not make any lawful prize. This ridiculous assertion was seriously opposed in the district and circuit courts, and in the supreme court of the United States ; at the close of the proceedings, which lasted near two years, the prizes were adjudged to the captors, but without allowing them damages.

In like manner have been treated the rich and numerous prizes of the French privateers *La Mere Michelle*, *Le Brutus*, *Le General Laveaux*, and *Le Vengeur*. The captors have gained their causes in three courts, and have not obtained damages.

Were it necessary to cite here all the vexatious proceedings commenced against French vessels, the undersigned minister plenipotentiary would be obliged to write a volume. He contents himself with adding to what he has just said, the affair of the *Vengeance* and that of the *Casius*.

Affair of the Vengeance.

At the beginning of 1794, the predecessor of the undersigned charged the captain of *La Dorade*, a French galley, with a particular mission for St. Domingo. He order-

ed him to go to New York with his galliot, to take some powder which was at Sandy Hook on board the frigate *La Semillante*, belonging to the Republick, and which made part of her equipment, and to carry them to general Laveaux. This vessel had formerly been armed for war; she had been built with port holes; consequently she attracted the particular attention of the government. Many difficulties were thrown in her way; but finally, after having submitted to all the requisite inspections, she sailed with a formal clearance from the collector of the customs of Philadelphia. She went to New York, where the captain acquitted himself of his mission, and thence to Port de Paix, where the powder was delivered to general Laveaux. At that place this galliot was sold to an inhabitant of St. Domingo, who armed her, equipped her completely, partly at Port de Paix, and partly at Cape Francois. She was called *La Vengeance*, and given to captain Berard, as commander, who sailed from St. Domingo with a commission in good form, and a crew entirely French, to cruise against the enemies of the Republick. A few days after her departure, she captured a Spanish vessel called the *Princessa des Asturias*, laden with a rich cargo, and carried her into the port of New York, in the summer of 1795.

The Spanish consul, availing himself of the facility given him by the law of the 5th June, 1794, had the prize arrested under the pretext that the privateer had been armed in the United States; and we saw officers of the government appear to defend his assertion;—Mr. Harrison, attorney of the district of New York, and Mr. Troup, clerk of the district and circuit courts, to which appertain the decision of the cause.

It was under these auspices that the prize was arrested, and the captain of the privateer saw himself obliged to defend her against the allegation of a pretended armament: But it was not sufficient to have arrested the prize, they must also attack the privateer. This did not fail to happen. Shortly after, Mr. Harrison, without laying aside his office of attorney for the captured, but acting in this instance in the name of the United States, informed against *La Vengeance*, and required her arrest under the same pretext which had been used for arresting her prize. This information was not founded on any affidavit or material

proof. But Mr. attorney, according to his letter to the Secretary of State, had no need of any; he had seen in the hands of the Spanish consul documents sufficient for having the prize condemned. In fine, not content with these measures, the same attorney, some time after, the two other causes being still pending, exhibited a second information against the privateer, and had her arrested anew, for having exported arms in violation of a law of the United States, which was in force when the Vengeance sailed from New York. This information was made on the simple declaration of Mr. Giles, marshal of the court, who, as informer, was to share part of the confiscation. So that all the officers of the district court (except the judge) were interested in the condemnation of the privateer or her prize. It is well to observe, that during the course of the process the moneys arising from the sale of the prize were deposited in the hands of the clerk (attorney for the Spaniards) those arising from the sale of the prize in the hands of the *marshal* (informer and interested in the confiscation)—so that their interest was to spin out these causes by means of appeal; and so it has happened.

As this last information is here principally in question, it is proper to enter into some details on the subject. It appeared in the allegation, that the privateer had exported from the United States two cannon, twenty muskets, and fifty barrels of powder.

Two cannon and twenty muskets could scarcely be an object of commercial speculation. The existence of the cannon has never been proved, and certainly, whatever muskets were found on board, were only for the defence of the vessel, without a wish to infringe the laws of the American government. The powder in truth was of the greatest consequence, but the consul of New York hastened to give his declaration under oath, and to prove by witnesses, that this powder had been taken from on board *La Semillante*, and made part of her equipment. Mr. Harrison did not yield to this evidence.

However, the three causes went on; but the yellow fever, which took place at New York, spun them out to considerable length. The judgment of the district court was not given till November. In the mean time, an express, which captain Berard had sent to St. Domingo, on

the first arrest of his prize, had returned with papers, proving in the most convincing manner, that the *Vengeur* [*Vengeance*] had arrived at Port de Paix without any armament or equipment whatever; and that she had been sold, armed and equipped wholly, and commissioned as a privateer, on the territory of the Republick. These documents were certificates of the general, the ordonnateur, and of the greater part of the principal officers of St. Domingo; the accounts of armament attested by all the providers, [fornisseurs] &c. the whole executed in the most authentick form.

The undersigned hastened to communicate these documents to the Secretary of State of the United States, and to request that he would order the attorney of New York district to stay the proceedings he had instituted in the name of the government; there was nothing done with them, and Mr. Harrison continued his prosecution.

In fine, the moment came for deciding these three causes. They were pleaded with much preparation before the district court of New York: The privateer was acquitted of the charge of illegally arming, and the prize adjudged to the captor. Mr. Harrison did not appeal as to the privateer; but the cause of the prize was carried to the circuit court, and finally to the supreme court; and these two tribunals confirmed the sentence of the district court.

As to the exportation, the judge was of opinion that the vessel should be condemned for it; and grounded his sentence only on the article of twenty *muskets*. Some of the attorneys for the privateer had considered it as of so little consequence, that they had not conceived it would be brought in question; and had omitted to speak of it in their pleadings. It was natural to appeal from such a sentence; the consul of New York was the appellant, and required, agreeable to a law of Congress, that the vessel should be given up to him, under security during the appeal: but he could not obtain it; the vessel was sold for less than a tenth part of the cost of her armament; and the money was deposited till the conclusion of the process.

The circuit court, as was expected, set aside the sentence which condemned the privateer; but Mr. Harrison, not content with all he had hitherto done, immediately

appealed to the supreme court of the United States, which was not more favourable to him, and confirmed the sentence of the circuit court. The government, notwithstanding the representations of the undersigned minister plenipotentiary, took a decided part in the appeal, and gave it in charge to Mr. Lee, the attorney general, to argue—which he did with much eloquence, but with the success such a cause merited.

Affair of the Casius.

IN the month of Thermidor, of the 3d year, (August, 1795) the corvette *Le Casius*, belonging to the Republic, commanded by captain Davis, and sent by general Lavaux to the undersigned minister plenipotentiary, on a particular mission, requiring her immediate return to St. Domingo, was seized in virtue of an order from the district court of the United States, for the state of Pennsylvania, and her captain was arrested at the suit of a merchant of Philadelphia, to answer for a pretended illegal capture made in virtue of his commission, and out of the jurisdiction of the United States.

The undersigned minister plenipotentiary complained of this violation of the treaties and of the law of nations, and requested the government to cause, as soon as possible, the release of the corvette *Le Casius* and her captain. He conceived himself so much the more grounded in his request, as he knew that a like interposition was not new in the annals of the United States: As he knew that the executive power of the state of Pennsylvania had interposed in a similar case, and in the same manner, in favour of the state of Virginia; and as this measure, dictated by a profound knowledge of the law of nations and of the reciprocal duties of nations, had been approved and ratified by the tribunals, organs of the law.* But Mr. Randolph, Secretary of State of the United States, replied to the undersigned on the 15th of August, 1795—"As long as the question is in the hands of our courts, the Executive cannot withdraw it from them."

* Simon Nathan versus the Commonwealth of Virginia. Dallas's Reports, p. 77.

The undersigned insisting on the 1st Fructidor, in the third year, 13th August, 1795) expressed himself in these terms: "I do not know nor ought I to know any other than the government of the United States; I cannot under any shape admit the competency of your tribunals in the different circumstances which arise on the execution or inexecution of the treaties. If these tribunals are the first to violate them, I can only address myself to the government for reparation of that violation; otherwise it would be to render the agents of the French government—the French government itself amenable to these tribunals; which would be to reverse principles." Informed that the *Casius* and her captain might be liberated on giving security, the undersigned requested, by the same letter, that the government of the United States would itself furnish this security; and knowing that the supreme court of the United States, which was then in session, had the power in certain cases of arresting the proceedings of the inferior courts, on their signifying to them a prohibition, he suggested to the secretary to adopt this sure and prompt method to put an end to this vexatious procedure. Both these requests were refused. The captain of *Le Casius* then addressed himself to the supreme tribunal, requested the prohibition and obtained it. The district court was enjoined immediately to stop the proceedings which had been commenced, and to liberate captain Davis and his vessel.

But at the very instant in which the *marshal* was desired to execute the order of the supreme court, he had already in possession a new order from another tribunal (the circuit court) enjoining him to arrest the vessel *anew*, upon the charge of an English merchant and naturalized American, stating that this vessel had been formerly armed in the United States; and consequently requested that she should be confiscated, one moiety to himself, the other moiety to the government. The undersigned was uninformed whether this vessel had ever been armed in the ports of the United States, he was even assured that some individuals had only attempted to put on board arms and ammunition, and which they were prevented from doing at the time; but he takes upon him to affirm, that since this vessel has become the property of the French Republick—General Laveaux armed and equipped her wholly

at St. Domingo : and that at her arrival here, she had not a cannon or pound of powder which had not been put on board her in the territory of France. This new order was signed by one of the judges of the supreme court (in quality of circuit judge) who having already ordered the prohibition in the first instance, must have known very well that this vessel was the property of the French Republick ; and who must also have known that the circuit court was not competent to this proceeding ; which the law and usage have constantly attributed to the district tribunals. But the district* court then sat but once a year at Philadelphia ; its approaching yet distant session was to be at York-town, and the prosecutor had adopted this round-about mode to take away every means from the French Republick of obtaining restitution of her vessel legally, before the expiration of near a year. In the interval, she was to rot at the quays of Philadelphia. This has taken place. The undersigned, from a spirit of conciliation, made an useless attempt with one of the judges of the circuit court to obtain the liberation of the vessel on giving security ; the reply was that the judge could do nothing of himself ; that the court when assembled could alone determine.

The undersigned minister plenipotentiary made new representations to the Secretary of State of the United States upon the foregoing facts. Mr. Pickering, then Secretary of State, in his answer of 1st August,† 1795—repeats this phrase of Mr. Randolph. “ As long as the question is in the hands of our courts, the Executive cannot withdraw it from them,” adding thereto this remarkable expression ; “ and therefore is not chargeable with suffering a violation of the treaties subsisting between the two republicks.” The undersigned complained that the new suit commenced against the *Casius* had been carried to an incompetent tribunal, and in the same letter of 1st August,† 1795, the Secretary of State replied on this head to the undersigned, “ the counsel who have told you that such is the law, have led you into an error,” &c.—maintaining the competency of the tribunal.

The undersigned minister, in these circumstances, saw himself obliged to disarm the vessel, to discharge the

* This should be Circuit.

† This should be October.

crew—which during these transactions he had supported at great expense, and abandoned the *Casius* to the government of the United States—protesting against the illegality of her arrest.

The undersigned minister is not acquainted with the details of what happened since that time relative to this affair; he only knows that in the month of October last, the circuit court declared itself incompetent, notwithstanding the assertion of the Secretary of State, and quashed all the proceedings. In consequence, the Secretary offered him the *Casius*; as if after having retained, in contempt of treaties, a state vessel, after having left her to rot in port, the government of the United States were not to answer both for the violation of the treaties, and for the damages the *Casius* has sustained.

(No. 5.) The Secretary of State, by his publick letter of the 1st November last—in answer to the note of the undersigned minister plenipotentiary of the 6th of Brumaire last, appears not to have understood either that note or the decree of the executive directory of the 14th Messidor of the 4th year.

This decree does not simply contain the order for seizing English property on board of neutral vessels, and of course on board of American vessels; it orders that the vessels of the Republick shall act towards neutrals in the same manner as neutrals shall suffer the English to treat them.

This decree consequently implies, not only the seizure of enemies property on board of American vessels, against the principle *free ships make free goods*, a principle the American government abandoned after having recognised it by acceding to the declaration of Russia in 1780—not only the seizure of articles classed as contraband in the treaty concluded between Lord Grenville and Mr. Jay, and declared innocent merchandises by the treaty of 1778, but also reprisals for all vexations, contrary to the law of nations and to the treaties, which the Americans shall endure on the part of the English, without an efficacious opposition.

The Secretary of State has been pleased to observe, that France and the United States, by a reciprocal treaty,

* This should be October.

had consecrated the principle, *free ships make free goods*, and diminished the list of articles seizable as contraband. Upon this basis he built reasoning which he might have spared if he had been pleased to remember the 2d article of the treaty of 1778.

The Secretary has also been pleased to reply in part to the note of the undersigned minister plenipotentiary dated 6th Brumaire relative to the press exercised on the American sailors, that the federal government were not to give an account to any nation of the measures it takes for the protection of its citizens ; if such an answer required a reply, the undersigned minister plenipotentiary would request the Secretary of State to observe, that the object of his note of 6 Brumaire, and of his letters of the 9 and 19 Germinal last, which are there referred to, was not at all to know the steps taken by the federal government, for the protection of its citizens ; but the measures pursued by it for preventing its citizens from increasing the maritime forces of the enemies of the French Republick, its ally. It is evident that in this case the federal government should give an account, and that the French Republick would have a right to regard its silence as a tacit consent to that measure, and a real hostility.

The undersigned minister plenipotentiary can no longer be suspected of having demanded of the government of the United States, explanations foreign to the relations which exist between that government and the French Republick, of having had the intention to wound the federal government, in his letter of 7 Vindemiaire in the 4th year, since after the passage cited by the Secretary of State, is the following paragraph ; “ But I am convinced it will not be so. The American government is too much attached to the laws of an exact neutrality, it knows too well that the cause of free people is linked to that of France, to allow to be usurped by the English a right injurious to the interest of the Republick.”

“ It is in this conviction that I have written you this letter, persuaded that it is perhaps superfluous to address to you these reclamations. I do not doubt but the American government will prove to all Europe the intention it has of maintaining the most exact neutrality with regard to the belligerent powers, that it will oblige England to violate no longer the rights of nations, and that it will not

henceforward reduce France to the pain of addressing new claims upon this subject."

(No. 6.) In the General Advertiser, published at Philadelphia on the 9th of June, 1796, may be seen the questions proposed by the President, on the 18th of April 1793, to the heads of the departments. The undersigned minister plenipotentiary contents himself with giving here an extract.

Question 2. Shall a minister from the Republick of France be received?

Question 3. If received, shall it be absolutely, or with qualifications, and if with qualifications of what kind?

Question 4. Are the United States obliged by good faith, to consider the treaties heretofore made with France as applying to the present situation of the parties—may they either renounce them or hold them suspended, till the government of France shall be established?

Question 12. Should the future regent of France send a minister to the United States, ought he to be received?

(No. 7.) The French government, zealous of giving to the United States proofs of its attachment, had commenced negotiations with the regency of Algiers, in order to put an end to the war which that power was making on the commerce of the United States. The minister for foreign affairs, by a letter of the 5th January, 1794, instructed the predecessor of the undersigned to communicate to the federal government the steps which the French government had taken in this respect. The predecessor of the undersigned, in consequence, wrote to the Secretary of State, on the 16th Prairial in the 2d year, the following letter—"I have already had the pleasure, sir, to inform you, verbally, of the interest which the committee of public safety of the National Convention had in due season taken in the truly unhappy situation of your commerce in the Mediterranean."

"I now fulfil the duty imposed on me by the government, by calling to your recollection in writing, the steps which are to be taken by our agent with the dey of Algiers, for repressing this new manœuvre of the British administration, which has put the finishing stroke to its proofs of malevolence towards free people. The despatch of the minister communicating this measure to me, is dated the 5th January, and did not come to my hands till fifteen

days ago ; I do not yet know by what route ; I could have wished it had been less tardy in coming to me, that I might sooner have fulfilled the agreeable task of proving to you by facts, the protestations of friendship of which I have so often spoken in the name of the Republick of France."

"The information which I shall receive from Europe in a little time, will doubtless possess me of the success of those negotiations which were to have been opened in January last. If the situation of your affairs is yet such with respect to that barbarous regency, as that our intervention may be of some utility, I pray you to invite the President to cause to be communicated to me the means that he will join to those of the committee of publick safety, for the greatest success of the measures already taken. It is in virtue of the express request of the minister, that I solicit of the President some communication on this subject: I shall be satisfied to be able to transmit it by a very early conveyance which I am now preparing for France."

The Secretary of State replied to him, on the 6th June, 1794, by a letter of which the following is an extract.

"Your other letter of the 4th of June, is a powerful demonstration of the interest which the Republick of France takes in our welfare. I will frankly communicate to you our measures and expectations, with regard to Algiers; but as you will so soon receive the detail of those measures, which your government have pursued in our behalf, and after the rising of Congress some new arrangement will probably be adopted by the Executive, it will be better perhaps to postpone our interview on this matter, until the intelligence, which you farther expect, shall arrive."

Then Mr. Jay was charged to negotiate with the British government—and the citizen Fauchet did not afterwards receive any communication on the subject.

(No. 8.) On the 13th Floreal in the third year of the Republick (2d May, 1794) the predecessor of the undersigned minister plenipotentiary expressed himself in these terms to the Secretary of State, upon the blockade of the French colonies.

"After so many useless attempts, sir, you must be sensible of the pain I experience in tracing this picture, so different from that which the French Republick gives whenever justice towards you is in question, even though

her interests are compromised. It was when a terrible war was incessantly devouring her, that she rigorously fulfilled her treaties with you; in this instance she demands but justice, and cannot obtain it. On the contrary, she sees her enemies admitted to an intimacy with you, at the moment in which your commerce and your sovereignty are alike insulted by them: At the moment when adding derision to injustice they despoil you anew upon the seas, when they promise to indemnify you for former acts. This reflection, sir, becomes much more grievous when we see posted up under your eyes the official legalization of a proclamation, which prohibits your commerce with our colonies, and suspends to you alone the law of nations. I know, sir, what respect imposes on me as to what immediately interests your affairs, and your relations as a people. But I cannot entirely pass in silence transactions to which the Republic is no stranger, because they are directed against her; and that to subscribe by an excess of courtesy to such orders, were to quit the neutral position which the Americans profess. Examine, I pray you, sir, whether this neutrality can be said to exist when on the one hand you can no longer maintain your treaties, and on the other you are obliged to abandon your relations exclusively to the discretion of England, who doubtless will soon declare all the universe blockaded, except her possessions. What account do you conceive I can render to the French government, of the means you take for rendering your neutrality respectable? Yet on that my instructions insist, and it is on that more especially that France is uneasy."

The Secretary of State replied on the 29th May, 1795, to this passage of citizen Fauchet's letters in the following manner:—

"The predicament of a neutral nation is always peculiar and delicate, and eminently so, while it defends itself against charges of partiality from one of the warring powers, lest it should seem to palliate the misdoings of another. But you are not to infer from any justification of the Executive, that the validity of the proclamation of blockade is assented to. We did read on the 10th of April, 1795, a publication from his Britannick majesty's consul general for the middle and southern states of America, giving public notice that he had received official communications,

that the islands of Guadaloupe, Marigalante and Desirade were by proclamation issued by his Britannick majesty's general and vice admiral, commanding in the West Indies, declared to be in an actual state of blockade; and that neutral vessels were by that proclamation prohibited from attempting to enter any of the ports or places of the said islands, with provisions or supplies of any nature or kind whatsoever, under the penalty of being "dealt with conformably to existing treaties, and as warranted by the established laws of nations." So highly valued has the West India commerce always been, that this exclusion was often revolved in the mind of the Executive. It was acknowledged that neutrals are interdicted by the law of nations from a blockaded port. From some quarter or other the blockade must be notified; or else neutrals would be a constant unsuspecting prey; not being in a condition to collect this information for themselves. Who then are to notify the military investment of a place? Surely not the besieged; but the besiegers, whether we consult principle or practice. The check which neutrals have upon a wanton and false parade of a siege, is the same with the check upon any other groundless pretence. We might indeed have remonstrated; but with what colour may well be imagined, when this department was unprovided with any document upon which the rescinding of that edict could have been urged. If rumour were a fit guide, who can pronounce on which side rumour preponderated, when stripped of the exaggerations, which a host of passions had gathered together? We had, it may be said, one effort remaining: which was to promulge to the citizens of the United States, that the proclamation was null and void *as to them*. If after this defiance of that act, any American vessel had risked, and incurred confiscation, the government would have been importuned for something more than the *general protection*, which is the birth right of all our citizens. The clamour would have been for a *special indemnity*; and under such a cloak, frauds innumerable might have been covered."

(No. 9.) The citizen Genet, one of the predecessors of the undersigned, notified the Secretary of State on the 23d May, 1793, that he was empowered to renew the existing treaties between the French Republick and the United States. The Secretary of State replied to him,

that the Senate not being assembled, it was impossible to meet his overtures, because that body were, according to the constitution, to participate in the consummation of treaties.*

On the 30th of September, 1793, citizen Genet renewed the subject; the Secretary of State, in acknowledging the receipt of that letter, informed him that he had laid it before the President, and that it will be taken into consideration with all the respect and interest that such an object requires.

The Senate assembled, and the treaty was never again brought in question.

The predecessor of the undersigned, in his verbal communications with the Secretary of State, expressed the desire which the Republick had of renewing her treaties. He received only evasive answers.

The undersigned minister plenipotentiary, charged to prepare with the federal government the plan of a new treaty of commerce, communicated to the Secretary of State, on the 30th June, 1795 (O. S.) that part of his instructions which authorized him to open this negotiation.

On this subject the President gave the necessary authority to the Secretary of State, who explained to the undersigned the manner in which they could proceed in it. But at what time? When the ratification of the treaty concluded between lord Grenville and Mr. Jay no longer permitted the undersigned to pursue that negotiation.

At Philadelphia, the 25th of Brumaire, in the 5th year of the French Republick one and indivisible (15th November, 1796, O. S.)

P. A. ADET.

[For Nos. 6, 7, and 8, containing Proclamation of Neutrality, and Instructions to Collectors, see preceding vol. p. 44—48.]

* Letter from Mr. Jefferson to Mr. Morris, dated 23d August, 1793, vol. i. p. 156 —Message from the President, 3d Dec. 1793, vol. i. p. 39.

No. 9.

TRANSLATION.

From Mr. Fauchet, Minister Plenipotentiary of the French Republick, to Mr. Randolph, Secretary of State. Philadelphia, the 9th Fructidor, 2d year of the French Republick, one and indivisible, (August 26, 1794, O. S.)

SIR,—I have informed you several times of the numberless vexations which our privateers are made to experience at the instigation of English agents: this persecution far from diminishing, becomes intolerable. I have used all the means in my power to prevent armaments in the United States; no commission has been granted since my arrival, and you may be assured that none will be given: but I am bound to defend with energy the rights of those who have been legally armed and commissioned. I believe I cannot better succeed in my means of defence than by addressing myself to a just and free government, to prevent the animosity of these subaltern agents, against all the French who make prizes upon our combined enemies. I am possessed of a great number of complaints, against those unjust and odious proceedings; I wait for certain information that I may submit them to the justice and impartiality of the government, which I believe is tenacious in the execution of its treaties, and in disavowing all those miserable subtilties—all those miserable chicaneries shamefully employed to damp the courage of the mariners of the French Republick: in the mean time, sir, I send you a picture which without doubt will be as afflicting to you as it is to myself. I pray you to cause orders to be given to the officers of the customs at Newport to restore to the agent of the Republick, the prize made by the privateer *Sanspareil*. Without informing the consul, without adhering more to the laws of fidelity than to those of equity, this prize has been seized and under the pretext, that the privateer *Sanspareil* had been armed in the ports of the United States. If this pretext had been really alleged, a more glaring injustice and more palpable falsehood could not have been disguised; but perhaps (as I may be permitted to suppose after such conduct) they have only wished to gain time; but perhaps, as has frequently happened, they have only wished

to discourage and fatigue the captors by injuring the prize from the length of time required for obtaining a decision, which they will retard by a thousand unfair expedients. In this case, sir, it is at length time to take a determination which will secure the interests of the captors, who without this precaution will be always injured, whatever may be the determination of the courts; they will be affected first by the loss of time, secondly by the expenses in prosecuting this business, and lastly by waste in the merchandises and vessels which they shall have taken. This reflection, dictated by justice, reminds me that a letter I wrote to you requesting indemnity for the ship *William*, which has been suffered to decay in the port of Philadelphia, upwards of a year, for the want of a decision, remains without an answer: I am inclined to believe, notwithstanding your silence, that you have taken my request into consideration; I will go farther, and say that I am sure it has been as favourably received as it is just. The one I now make is not less so sir, and I calculate upon an answer as prompt as favourable.

Accept, sir, my esteem,

JH. FAUCHET.

No. 10.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, 3d Sept. 1794.

SIR,—I have urged the governour of Rhode Island to report, without delay, the case of the prize, taken by the privateer *Sanspareil*. Be assured, sir, that no doubt is entertained of your determination to discountenance illicit privateers, and that the government of the United States will not suffer the acquisitions of the French privateers to be wrested from them, without adequate cause; nor yet, that they should be wantonly vexed by unjust detentions.

I have the honour, sir, to be, &c.

EDM. RANDOLPH.

No. 11.

From the same to the same. Philadelphia, Sept. 27, 1794.

SIR,—I do myself the honour of informing you, that the governour of Rhode Island has decided, that the Perseverance, a prize to the Sanspareil, shall be restored to the captors; and of assuring you that I am with great respect, &c.

EDM. RANDOLPH.

No. 12.

Mr. Randolph, Secretary of State, to the Governour of Rhode Island. Philadelphia, Sept. 3, 1794.

SIR,—It being represented that the Perseverance, a prize to the French privateer Sanspareil, is detained at Newport by your excellency's order, with a view to institute an inquiry into the legality of the privateer, and consequently of the prize; I have to request you, sir, as soon as may be, to transmit to me the circumstances of the case. I have now before me a letter from the French minister, who expresses great anxiety lest delay should take place in the settlement of cases, like the present; and the ardour of French privateers be damped by the vexations which a seizure of their prizes may produce.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 13.

TRANSLATION.

Mr. Fauchet, Minister Plenipotentiary of the French Republick, to Mr. Randolph, Secretary of State. Philadelphia, 26 Vendemiaire, 3d year of the French Republick, one and indivisible, 17th Oct. 1794, (O. S.)

SIR,—I conceive how painful it must be to you to observe me recurring so often to the same questions and speaking to you so frequently on the same affairs: be persuaded that it is not less so to me, to have daily new motives of complaint against the abuse made of the laws in order to persecute our privateers.

You announce to me that *La Perseverance*, prize to the *Sans Pareil*, had been delivered to the captors by order of the governour of Rhode Island; in contempt of that decision the English agents have just created new difficulties; a new decision is still expected to take place on the first Monday of November. It is impossible, sir, for this state of things to continue much longer; you are sensible how necessary it will be to retrench from our treaty the article which reciprocally permits the ships of war of the two nations to conduct to and sell their prizes in their respective ports, should this right become illusory and void by the difficulty thrown in the way of its execution. I proposed a method as simple as it is just, for putting an end to this tyrannical chicanery,—this method was to require security from those who prosecuted prizes as illegal; were this measure adopted it would render our enemies less ingenious in their proceedings, and prevent them from bringing so many actions of the injustice of which they themselves are convinced.

Your silence led me to presume that you were of opinion with me on this point. I am undeceived by the recent complaints which crowd upon me from all parts; I expect, sir, that the federal government will put an end to these persecutions by the mode I have proposed, or by any other which its wisdom may suggest.

Permit me, sir, to call to your attention at the same time, the outrage committed on board the *Favourite* by men clothed in American uniform. Among the arms which they have pillaged, there are some, of which the Republick stand in great need. I hope that forms will not add to the crime already committed, delays, injurious to the interests of the French Republick, outraged by an act so contrary to the law of nations and to treaties.

Accept, sir, my esteem,

JH. FAUCHET.

No. 14.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, October 22, 1794.

SIR,—I received your letter of the 17th instant, remonstrating against the vexations which your cruisers are said

to experience, with the most unqualified wishes that we were always able to administer immediate relief. But the extent of the United States imposes the necessity of substituting the agency of the governours in the place of an instantaneous action in the federal Executive, and therefore general rules alone can be provided.

Under these rules, formed in the last year, the governor of Rhode Island operated on the prize of the *Sans Pareil*, and discharged her. If however, individuals conceive, that they have a legal claim upon her, and draw her before a court of law, the Executive of the United States cannot forbid them. The plea, under the treaty, that the court has no cognizance of French prizes, will be admitted if it applies, and the person by whom the process is instituted, will be liable to a judgment for costs and damages, if he fails in his proof.

The bond, which you propose as a security against vexation, we have no power to demand, because the Executive do not mean to interfere without presumptive proof of title, and this presumption when established, would seem to be a sufficient protection against being harassed. The courts have their forms, founded on similar precautions. Knowing that this was the situation of our laws, I am not authorized to make the arrangement proposed.

However I will do every thing which can be done with propriety; and that is contained in the letter, of which I have the honour of sending you a copy.

Papers respecting the *Favourite*, were received this morning from New York, and copies of them are now transmitted to you.

I have the honour, &c.

EDM. RANDOLPH.

No. 15.

CIRCULAR.

The Secretary of State to the Governours of the several States. Philadelphia, October 22, 1794.

SIR,—It gives me pain to inform your excellency, that Mr. Fauchet, the minister plenipotentiary of the French

Republick, believes that he has reason to complain of the treatment which French prizes have too often received in our ports.

He represents, that by the machinations of the enemies of his country, the captors are harassed by seizures, arrests and detentions, the most vexatious and cruel: that as soon as the claimants are foiled in one attempt, they betake themselves to another. On my part, as from the confidence which the President reposes in the executives of the states, they have been requested to fulfil the general rules laid down by him, I could only undertake to address your excellency upon the subject.

Mr. Fauchet is anxious, that a bond should be given by the claimants before the executives shall interpose in any case of a prize. Doubting the legality and expediency of this suggestion, I have it not in my power to recommend it. But I have assured him, that none of the chief magistrates of the states will ever interfere without a strong presumption of title. A late circumstance has, however, brought to view the practicability of oppression, unless precautions be adopted by the executives. The claimants may often pursue a double chance by first procuring a trial before the governours; and if defeated, by next resorting to the courts of law. It is desirable therefore, that, whensoever an application shall be made to your excellency with respect to a prize, you should cause it to be examined well, whether the courts have jurisdiction to inquire into the affair. If they have, then it seems proper that your excellency should not interpose. If the courts have not jurisdiction, and you are convinced *that there is good ground for detaining the prize, in order to comply with the rules established by the President last year, then, and then only* your excellency will so proceed. By these means, the vexation complained of will be avoided, as far as lies in the power of the Executive of the united or individual states: and the construction of the treaty will be left to the judiciary, who are more particularly the expositors of it. By these means also, the article of that treaty will be best preserved from violation, and the honour of our nation sustained.

But nothing, which I have now taken the liberty of offering to your excellency's consideration, is intended to

check the succour, which at any time you may find it necessary to give to the officers, charged with the execution of legal process.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 16.

In the Supreme Court of the United States. United States, ss.

Alexander S. Glass and others, Appellants,	}	Appeal from the Circuit Court for the Maryland District.
<i>vs.</i>		
The sloop Betsey and cargo, &c. and Pierre Arcade Johannene, Appellee.		

At a supreme court of the United States held at Philadelphia, the same being the present seat of the national government, on Saturday the eighth day of February in the year of our Lord, one thousand seven hundred and ninety-four, before the honourable John Jay, Esq. chief justice, and the honourable William Cushing, James Wilson, John Blair, and William Patterson, Esquires, associate justices of the said court, came the parties, as well appellants as appellee in the above appeal, by their respective advocates, and after full hearing of all and singular the matters and things set forth and contained in the record and minutes of the proceedings, in the said appeal, as well of the circuit court for the Maryland district, as of the district court for the said district, and solemn argument being had thereon by the said advocates; the said supreme court, sitting and adjourning from day to day, until the 12th day of February instant, took the same into consideration and held the same under advisement until the 18th day of February aforesaid.

At which day the said supreme court of the United States being met, and the advocates aforesaid attending, the court proceeded to the publication of their final sentence or decree, which being read and filed is in the words following; to wit:

This court being decidedly of opinion, that every district court in the United States possesses all the powers of a court of admiralty, whether considered as an instance or as a prize court, and that the plea of the aforesaid appellee, Pierre Arcade Johannene, to the jurisdiction of the

district court of Maryland is insufficient; therefore it is considered by the supreme court aforesaid, and now finally decreed and adjudged, by the same, that the said plea be, and the same is hereby over-ruled and dismissed, and that the decree of the said district court of Maryland, founded thereon, be and the same is hereby revoked, reversed and annulled.

And the said supreme court being further clearly of opinion, that the district court of Maryland has jurisdiction competent to inquire and to decide, whether, in the present case, restitution ought to be made to the claimants, or either of them, in whole or in part, that is, whether such restitution can be made consistently with the laws of nations, and the treaties and laws of the United States; therefore it is ordered and adjudged, that the said district court of Maryland do proceed to determine upon the libel of the said Alexander S. Glass and others agreeably to law and right, the said plea to the jurisdiction of the said court notwithstanding.

And the said supreme court being further of opinion, that no foreign power can of right institute or erect any court of judicature of any kind within the jurisdiction of the United States, but such only as may be warranted by, and be in pursuance of treaties; it is therefore decreed and adjudged, that the admiralty jurisdiction, which has been exercised in the United States by the consuls of France, not being warranted, is not of right.

It is further ordered by the said supreme court, that this cause be, and it is hereby remanded to the district court for the Maryland district, for a final decision, and that the several parties to the same do each pay their own costs.

A true copy,

JACOB WAGNER,
Clk. Sup. Ct. U. S.

No. 17.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 27th Fructidor, 2d year of the French Republick, one and indivisible, (13th Sept. 1794.)

SIR,—I am about to lay before you an affair, which I have often mentioned to you in conversation. I could have wished that it were possible to present you at the same time an account of the vexations of which I complained in my letter of the 9th Fructidor,* and of which Charleston has been the principal scene. It is painful to me to be obliged to recur so often to subjects of this nature; but I could delay no longer to communicate to you the affair, which shall constitute the subject of this letter, and on which I think it my duty to claim the speedy justice and good offices of the federal government.

The French privateer *L'Ami de la Pointe a Petre*, captain William Talbot, commissioned at Guadaloupe, seized near the island of Cuba, a Dutch brigantine called *De Vrouw Christiana Magdalena*. This vessel had been originally captured by a French armed vessel, called *L'Amour de la Liberte*, but having been met with and visited by *L'Ami de la Pointe a Petre*, and the prize master, who had been put on board by the first captor, not being able to produce a commission, the latter manned her and brought her to Charleston. Having arrived at that port, captain Talbot was arrested at the suit of the Dutch captain, as a pirate, and security to the amount of fourteen thousand dollars was demanded from him for his liberty. Proceedings were immediately instituted against the captors in the court of admiralty, and notwithstanding the representations of the French consul, notwithstanding the documents furnished in favour of Talbot, and which, as you will soon see, were not of a nature to be refused, the prize was adjudged illegal, and restored to the claimants. I could have wished, sir, to have it in my power to send

* Aug. 26, 1794.

you a formal copy of the decree pronounced by the court ; but if the enclosed extract from the gazette of Charleston may be deemed sufficient information, it appears that the sentence was grounded on the illegal equipment of the capturing vessels, on captain Talbot's being a citizen of the United States, and his vessel armed at Charleston.

On the first point I will observe, that *L'Ami de la Pointe a Petre* should have been considered as the only legitimate captor, the schooner *L'Amour de la Liberte*, not having any right, and her existence as a vessel armed for a cruise being absolutely out of my knowledge ; that it was by address, that the claimants instituted an action on the ground of the illegality of this first captor ; that intrigue suppressed the just representations which Talbot might have substantiated, and confounded him with the other. I will add, sir, that as soon as I was informed of the manner in which *L'Amour de la Liberte* had been armed and commissioned, I sent pressing orders to Charleston to do justice on the occasion, desiring thereby to give your government a new proof of the fidelity with which we keep our promises.

To illustrate the second point, I enclose, sir, a copy of the oath which citizen Talbot took to the French Republic before the municipality of Point a Petre, an oath which assures to him the rights of a French citizen, which, agreeably to the laws of your country he had a right to take, and in virtue of which I find myself obliged to maintain him in the exercise of the privileges it acquires for him. I send you at the same time a copy of the commission which he obtained from citizen Collot, then governor of Guadaloupe. You will thereby see, that the vessel which he commands is French property, belonging to citizen Samuel Riddick, of Point a Petre. These documents, sir, which were officially communicated to me by the consul of Charleston, are the same which were produced in support of Talbot's claim, and I have reason to be very much surprised, that their validity should appear to have been drawn in question by the judge of the court of admiralty. Acts passed by a French municipality or delivered by French publick officers, acknowledged as such, ought not to have been submitted to the control of the American courts, and it is without doubt in consequence of a mistake in the form of the proceedings, or of an inaccuracy in the

printed account, that the affair presents such an aspect. The point to be decided appears to me to be, whether Talbot had or had not a right to become a Frenchman, on renouncing the protection of the United States. Whether his vessel had or had not been built in the United States, appears to me to be immaterial, since it is proved that the vessel was French property when she was commissioned. Besides, I do not believe that in last December there existed a law to prohibit an American from transporting his property at his own risk, and disposing of it where and to whom he should think proper.

To return, sir, I have just explained to you the vexations to which citizen Talbot has been exposed, as well in his person as his property. I earnestly request you, and I expect it from the justice of the federal government, to cause them to cease as soon as possible. As far as the process, commenced against him is concerned, I believe that he has appealed in his own name to the circuit court from the sentence pronounced by the admiralty. I know that the government cannot officially interfere in this business; but would it not be possible to engage the attorney of the district at Charleston to aid captain Talbot with his good offices to recover as speedily as possible a prize, which, according to the 17th article of our treaty, the *Ami de la Pointe a Petre*, acknowledged to be a French privateer, "has a right to conduct where it pleases, without the officers of the admiralty in the ports or harbours of the United States, taking cognizance of the validity of the said prize."

I cannot close this letter without mentioning to you a circumstance which took place in the suit in question, and which lies heavy at my heart. The chancellor of the consulate at Charleston was summoned to the bar of the court to testify the authenticity of my proclamation. He appeared there without hesitation: but on the next day having been summoned anew, to answer upon points which appeared to the consul foreign to the matter pending in the court, he received an order to testify upon this second demand, agreeably to a citation to the French consul and to his chancellor to appear before the judge of the admiralty, and an order to the marshal of the court to bring with him a copy of the documents demanded, or the documents themselves. I enclose a copy of the summons.

Without speaking of the immunities of our chanceries, and of the application of this right to the present case, you will observe, sir, how inconsistent the terms of this paper are with the cordiality which ought to prevail between the publick officers of our two nations, and with the reciprocal regard which they have a right to expect. I acknowledge, that this incident very seriously affects me; for this kind of procedure, even supposing it to be founded in the law, cannot fail finally to interrupt the good understanding which so happily prevails between the two people, especially if it be compared with the attentive and very delicate manner with which the American tribunals have heretofore been accustomed to treat the agents of the French nation on similar occasions. I do not doubt, sir, that you will partake of my sensibility in this respect.

Accept, &c.

JH. FAUCHET.

No. 13.

Charleston, Saturday, August 9, 1794.

WEDNESDAY, in the court of admiralty for this district, the judge pronounced his decree in the long contested cause of the Dutch brigantine the *Vrouw Christiana Magdalena*, captured and brought into this port by the captains Ballard and Talbot.

The libel was on behalf of the captain and owners of the said brigantine, claiming restitution under the 15th and 19th articles of the treaty with the United Netherlands. A plea was entered to the jurisdiction of the court, under the 17th article of the treaty with France, and the 6th section of the act of Congress of the 5th of June last, entitled "An additional act to the act for the punishment of crimes and offences against the United States."

And a claim was interposed on the behalf of capt. Wm. Talbot, as a French citizen, acting under a commission from the governour of Guadaloupe, and as having taken this vessel out of the possession of capt. Ballard, the original captor, his prize-master producing no commission.

The judge, on considering the arguments in support of the plea to the jurisdiction, over-ruled the same as irrelevant.

1st. Because the 17th article of the treaty with France contemplates only French vessels of war, or privateers legally appointed.

2nd. Because the 6th section of the act of Congress of the 5th of June last does not lessen the jurisdiction of the district courts, in any case of which they had previous cognizance; and the decree of the supreme court of the United States, in the case of *Glass* and others, against the sloop *Betsey*, &c. having declared that every district court of the United States possesses all the power of an admiralty court, whether considered as an instance or a prize court. This cause was therefore cognizable therein by the law of nations and the constitution of the court.

The judge being of opinion that capt. Ballard had acted without any commission authorizing him to cruise or arm for war, and had not even the pretence of being a French citizen: that capt. Talbot having armed his vessel (then an American bottom) in an American port, proceeded thence to Guadaloupe for the express purpose, as appeared in evidence, of changing the property, applying for a French commission, obtaining the same within two days after the sale of the vessel, and under colour of such commission having captured the said brigantine *Vrouw Christina Magdalena*: which acts were deemed contrary to the 19th article of the treaty with the United Netherlands, and in no way derogatory to the 17th article of the treaty with France, as not being within the purview or intention thereof—Restitution of the vessel and cargo was therefore decreed.

No. 19.

UNITED STATES,)
SOUTH CAROLINA DISTRICT. §

THE President of the United States of America, to [L. s.] the marshal of the court of the United States, having and holding admiralty jurisdiction.

You are hereby commanded without delay to cite and admonish Antoine Louis Fonspertuis, vice consul, and Rene Godard, chancellor of the consulate of the French Republick at Charleston, immediately to be and appear before the honourable Thomas Bee, Esq. judge of the said court of admiralty, at the usual place of judicature in

Charleston (at the court now sitting) at ten o'clock in the forenoon, then and there to testify the truth on behalf of the libellants in a certain cause instituted in the said court by Joost Janson, late master of the brigantine de Vrouw Christiana Magdalena, against the said brigantine and cargo, and against William Talbot. Herein you are not to fail, and to bring with you or one of you, and produce and lodge in the said court authenticated copies of certain commissions recorded in the publick registers of the office of the consulate of the French Republick in Charleston, heretofore issued in the city of Charleston, in South Carolina district, to the schooner Citoyen Genet, the schooner Sans Culottes, and the schooner les Vainqueurs de la Bastille, or a copy of one of them, and this you may in no wise omit, and also a copy of the marine regulations of France respecting privateers and prizes.

Witness the Hon. Thomas Bee, Esq. judge of the said court of admiralty, at Charleston, the seventeenth day of July, in the year of our Lord one thousand seven hundred and ninety-four, and in the nineteenth year of the sovereignty and independence of the United States of America.

JACOB READ, Proctor.

In the Admiralty, Joost Janson, the	} Co.
Brigantine de Vrouw Christiana	
Magdalena, and her cargo, and	
William Talbot.	

Citation and
Decree final.

Monsr. FONSPERTUIS.

READ.

True copy; JH. FAUCHET.

No. 20.

WINDWARD ISLANDS, {	} EQUALITY. LIBERTY.
GUADALOUPE. }	

FRENCH REPUBLICK.

IN THE NAME OF THE FRENCH PEOPLE.

George Henry Victor Collot, major general of the armies of the French Republick, governour of the Islands and their dependencies.

In consequence of the declaration of war made against the king of England and the stadtholder of Holland, agree-

ably to the proclamation of citizen Rochambeau, commandant general of the Windward Islands, and the hostilities committed in the latitudes of Guadaloupe and its dependencies, by the ships of the enemy :

We, in virtue of the powers delegated to us, authorize citizen Samuel Riddick, resident at Point a Petre, to arm for war under the command of citizen William Talbot, the schooner *L'Ami de la Pointe a Petre*, of the burden of about 60 tons, to cruise against the enemies of the Republick, of whatsoever nation they may be, and to sustain with the courage and intrepidity of a true republican, the dignity and honour of the national flag.

We enjoin the owner and officers commanding the said schooner not to permit any pillage of negroes, cattle, moveables and utensils of the inhabitants residing upon those enemy coasts ; religiously to respect the fishermen, their canoes and nets, conformably to the decree of the National Convention, hereby disavowing all violences, which may be exercised against the law of nations, and we formally declare, that we will compel the restitution of all captures which shall be made contrary to the law of a liberal and generous warfare, which the French Republick intends to wage with its enemies.

We equally desire, that the prizes which may be made, may be conducted, as far as it is practicable, into the ports of Guadaloupe ; and, if this colony should be attacked, that the said vessel should come to its assistance and make a common cause with it, against the publick enemies ; and for the fulfilment of the above conditions, citizen Samuel Riddick has given good and sufficient security to the municipality of Point a Petre ; and the present shall be enrolled in the tribunal of the district of the said town of Point a Petre.

Given at Basseterre, Guadaloupe, the 8th of January, 1794, in the third year of the French Republick,

COLLOT.

Registered in the register of enrolments of the registry of the tribunal of the register, established at Point a Petre, this 9th of January, 1794, in the 3d year of the French Republick.

CONARD.

A true copy.

GODARD.

I certify this copy to be just and true.

JH. FAUCHET.

No. 21.

Municipality of Point a Petre. Guadeloupe.

BEFORE US, Andrew Courtois, Mayor, I. B. Parro, Francis Phillip Gossee and I. B. Dusseau, municipal officers, appeared citizen William Talbot, a native of North America, attended by citizen I. Caille, interpreter of the English language, who, being admitted to the rank of a French citizen, in virtue of the decree of the National Convention, desired to take the oath of allegiance to this nation, which we granted to him. In consequence of which citizen William Talbot lifted up his hand and swore to be for ever faithful to the French Republick and to its laws, and to support the constitution with all his power: which act the citizen Caille and the register have signed with us.

Given in the town house of Point a Petre, Guadeloupe, 28th December, 1793, in the 2d year of the French Republick. Signed, Courtois, mayor, Gossee, municipal officer, Parrau, municipal officer, Dano, Casson.

A true copy.

GODARD.

I certify this copy to be just and true.

JH. FAUCHET.

No. 22.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 6th Brumaire, 3d year of the French Republick, one and indivisible, 27th October, 1794, (O. S.)

SIR,—I take the liberty of reminding you of the letter which I had the honour to write to you on the 13th of last month (O. S.) on the subject of citizen Talbot. I have nothing to add to the facts which it contains, unless that it is much to be feared, lest the circuit court before whom the appeal was brought, may pass over, as superficially as the district court, the unquestionable documents, which Talbot exhibits, and lest the matter may become otherwise

very complicated, if with this unfavourable chance, the issue of which was foreseen, it should proceed without the interposition of the government.

Your silence, sir, I must confess excites my solicitude for the idea you may have formed of the consequences of this decision. They go far beyond the simple fact of prize; and fearing lest they may have escaped you, I must beg you to permit me, to represent them here in a summary form.

The decision already made and that which is foreseen, implicate, at once *the treaties, the law of nations*, and the fundamental maxims of *municipal law*.

The validity of a prize is contested notwithstanding the legal commission of the captor; notwithstanding the 17th article of our treaty; an article solemnly guarantied by the 22nd of the treaty of Holland with you, of which I am astonished, that Talbot's antagonists should be permitted to avail themselves.

The right, which every citizen of a free state possesses, of entering into the service of a foreign nation, and of procuring himself to be naturalized there, is drawn in question: the word *Pirate* has received a definition of a terrible extent. If the decision of the first tribunal is founded in justice, your citizens are villains attached to the soil, your laws follow them to a foreign domain, even though they have renounced them. France, although she has naturalized them, cannot take them into her service; and there is the same reason, why an American, who has been promoted to a high station in our armies or marine should be hung, when he should be made a prisoner by the Dutch, the Swedes or the Prussians.

Finally an act passed by a French municipality is about to be determined on by the circuit court, notwithstanding the maxim consecrated by universal jurisprudence, *that a court ought to acknowledge the acts of a foreign tribunal*.

I request, sir, all your attention to this recapitulation. We are agreed, that the government must finally answer for the violations committed upon the political rights of another government. I ought not to conceal from you, that the commission of Talbot and the validity of the prize would be sustained in France. In proportion as the Republick is accommodating with regard to doubtful privileges, she is tenacious of her unquestionable rights, espe-

cially when the concession of them would be followed, as in the case in question, by such important consequences. Accept, sir, my esteem.

JH: FAUCHET.

No. 23.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia. Oct. 28, 1794.

SIR,—Two reasons have prevented an earlier answer to your letter of the 13th ultimo which was received on the 16th. The first was that the insurrection at Pittsburg and the subjects connected with it incessantly absorbed our attention, and the second, that I was in hopes, that a complete copy of the record, duly exemplified, would have been forwarded to you. We should then have been more fully qualified to examine this case throughout its several stages. For although what shall come from you will always be treated with the most respectful attention, yet when the conduct of one of our courts is impeached, there may often be in a formal statement of its proceedings, at full length, something which may vary the impression, arising from a detached part of them. However, as in your letter of yesterday you urge an answer, I now do myself the honour of transmitting it.

1. The necessity of a complete record is demonstrated by your first remark, that the *Ami de la Pointe à Petre* ought to be considered as the sole lawful captor. This is entirely a matter of fact, and must have depended upon the evidence given.

After this fact was established so as to satisfy the judge, it would seem that he then inquired whether she was a legal privateer. Whether the equipment of the vessel here was with a view to convert her into a privateer at Guadeloupe, it is impossible for us to judge, deprived of the testimony; or whether if this was the case, she thereby became illicit, is a point of law, which at this stage of the business the Executive cannot take up. For the principle will be admitted, that the government, to which an individual belongs, cannot interpose in his behalf for a defect of justice, until the gradation of tribunals shall have

been resorted to ; and in this channel captain Talbot seems to be now proceeding.

2. I cannot doubt that captain Talbot has taken an oath to the French Republick ; and at the same time I acknowledge my belief, that no law of any of the states prohibits expatriation. But it is obvious, that to prevent frauds, some rules and ceremonies are necessary for its government. It then becomes a question, which is also an affair of the judiciary, whether those rules and ceremonies have been complied with. Should he prove to be a French citizen, he ought and will be acquitted. Should he prove to be an American citizen, he will be amenable to the laws.

Under these circumstances you will perceive, that it is impracticable for the Executive of the United States to interpose, *as yet at least*, so far as regards the foregoing case. For to interpose would imply, that the Executive is satisfied of his being in a situation, which enables him to decide on the affair ; which is not the case.

But, sir, the other point of your complaint against the summons to the consul to produce his papers of office, seems to call upon us to do something. Although any opinion, which the Executive may entertain against the propriety of this proceeding cannot constitutionally influence it ; yet is it its duty to have it revised by some superior tribunal. I will therefore write to the attorney of the district to this effect ; and I will moreover instruct every attorney of every district to oppose all attempts which shall be made to counteract the consular convention, especially in the immunities of consuls touching their papers of office.

If the established laws of our land will not permit us at all times to go the full length of what the representative of the French Republick wishes, he will not ascribe the omission to any want of cordiality or friendship to his nation, but to the sovereignty of law. I have the honour to be, sir, &c.

EDM : RANDOLPH.

No. 24.

April 16, 1794.

Gentlemen of the Senate,

THE communications which I have made to you during your present session, from the despatches of our minister in London, contain a serious aspect of our affairs with Great Britain. But as peace ought to be pursued with unremitted zeal, before the last resource, which has so often been the scourge of nations, and cannot fail to check the advanced prosperity of the United States, is contemplated, I have thought proper to nominate and do hereby nominate John Jay, as envoy extraordinary of the United States, to his Britannick majesty. My confidence in our minister plenipotentiary in London, continues undiminished; but a mission like this, while it corresponds with the solemnity of the occasion, will announce to the world a solicitude for a friendly adjustment of our complaints, and a reluctance to hostility. Going immediately from the United States, such an envoy will carry with him a full knowledge of the existing temper and sensibility of our country; and will thus be taught to vindicate our rights with firmness, and to cultivate peace with sincerity.

GEO: WASHINGTON.

No. 25.

Declaration of E. Randolph—July 3, 1795.

I NEVER could with truth have informed the French minister, that the mission, as set forth in the President's message to the Senate, contemplated only *an adjustment of our complaints*, if by this phrase it be intended to exclude commercial arrangements: I could have had no reason for saying so, since the French Republick could have had nothing to do with our commercial arrangements, if they did not derogate from her rights—it could have answered no purpose, when so short a time would develop the contrary—I never did inform the French minister as is above stated.

The only *official* conversation, which I recollect with Mr. Fauchet upon this subject, was, when I communicated

to him, with the President's permission, that Mr. Jay was instructed not to weaken our engagements to France. Neither then nor at any other time in official or unofficial conversation did I ever say to him, that nothing of a commercial nature was contemplated; or that nothing but the controversies under the old treaty, and the spoliation were contemplated.

Mr. Fauchet some time ago said to me, that he understood from what I said, that Mr. Jay was not authorized to treat of commercial matters—I told him, that he misunderstood me—No letter has ever passed upon this subject.

EDM: RANDOLPH.

No. 26.

TRANSLATION.

The Minister Plenipotentiary of the French Republic near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 12th Messidor, 3d year of the French Republic, one and indivisible. (June 30, 1795, O. S.)

SIR,—I have received the treaty of amity, commerce and navigation, concluded between the United States and Great Britain, of which the President has been pleased that I should be possessed, in order to enable me to make such observations thereon as I might judge proper. This frank measure is to me a sure guaranty of the friendship of the American government towards France, and of the fidelity with which it always marks its conduct towards a faithful ally. It is therefore with confidence that I am about to submit the reflections to which the reading of the treaty has given birth. They will not be founded, sir, upon general questions—they shall be confined merely to the stipulations of the treaty concluded with England, which, contrary to the interests of France, appear to me to destroy the effect of her treaty with the United States.

I shall not speak of the 12th article, since that is suspended. I shall not represent to you how injurious it may be to France and the United States. It necessarily paralyzes the commerce of the United States with the French colonies. In fact, would an American merchant be willing to treat with our colonies for the exportation of

produce, which he cannot vend in Europe? Is not this an indirect means of preventing the colonies from participating in advantages which the English reserve to themselves? But, sir, this is not the only article upon which I can present observations to you.

The 17th, 18th, 24th and 25th articles appear to merit great attention, when we compare them with the 23d, 24th and 17th of our treaty. Indeed, sir, subsequent to the 17th, which states that the contracting parties agree that the respective vessels may be arrested and detained upon just suspicion that they are laden with merchandises belonging to an enemy, or that they are carrying to the enemy articles which are contraband of war, &c. is the 18th article describing those articles and which states, "It is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenadoes, carcasses, saucisses, carriages for cannon, musket rests, bandoliers, gunpowder, match, saltpetre, balls, pikes, swords, head pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all other implements of war, *as also timber for ship building, tar or rosin, copper in sheets, sails, hemp and cordage, and whatever may serve directly to the equipment of vessels*, unwrought iron and fir planks only excepted; *and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy.*" The 23d article of the treaty between France and the United States, which secures the liberty of commerce to the citizens of both countries, contains this stipulation. "It is stipulated by the present treaty, that free ships shall make free goods, and that every thing shall be judged free which may be found on board of the vessels belonging to the subjects of the contracting parties, *if even the lading or a part thereof should belong to the enemies of one of them*; it being nevertheless understood that contraband articles shall be always excepted." The 24th article explains the articles of contraband and prohibited merchandises in the following manner, "Under the name of contraband or prohibited merchandises are comprehended, cannon, bombs with their fusees, and other things thereto belonging, bullets, gunpowder, matches, pikes, swords, lances, spears, hal-

berts, mortars, petards, grenades, saltpetre, muskets, musket ball, bucklers, helmets, breast plates, coats of mail, and the like kinds of arms, proper for arming soldiers, musket rests, belts, horses with their furniture, and all other warlike instruments whatever. These merchandises which follow shall not be reckoned among contraband or prohibited goods; that is to say, all sorts of cloths, and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever, all kinds of wearing apparel, together with the species whereof they are used to be made, gold and silver, as well coined as uncoined, tin, iron, latten, copper, brass, coals; as also wheat and barley, and any other kind of corn and pulse; tobacco and likewise all manner of spices; salted and smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars and all sorts of salts; and in general all provisions which serve for the nourishment of mankind and the sustenance of life; furthermore, all kinds of *cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail cloths, anchors and any parts of anchors, also ships masts, planks, boards and beams, of what trees soever; and all other things proper either for building or repairing ships*, and all other goods whatever, which have not been worked into the form of any instrument or thing prepared for war, by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use; all which shall be wholly reckoned among free goods; as likewise all other merchandises and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods; so that they may be transported and carried in the freest manner by the subjects of both confederates, even to places belonging to an enemy, such towns or places being only excepted, as are at that time besieged, blocked up or invested."

The law of the 13th Nivose, in the 3d year, secures to the treaties a full execution, and the arret of the committee of publick safety, dated the 27th of the same month, transmitted to you by colonel Monroe, bears evidence of the entire execution of the article of our treaty which I have just cited to you. The United States, therefore, in virtue of these acts, may freely transport to England hemp, flax, tar, peltry, cordage, cables, sails, sail cloth, &c. and every

other thing proper for the construction or repair of vessels, without apprehending any hindrance on our part; while by the articles of the treaty with England, the United States cannot carry to us any of the articles proper for the construction of vessels, since the English have the power of seizing them. The United States have therefore granted to England a right which we have not, and which in the course of the present war inclines the balance in favour of England.

The 23d article of the treaty between the United States and England, states that English vessels and those of the United States shall be hospitably received in the respective ports of the two contracting nations—and article 24th states, “It shall not be lawful for any foreign privateers, (not being subjects or citizens of either of the said parties) who have commissions from any other prince or state in enmity with either nation, to arm their ships in the ports of either the said parties, nor to sell what they have taken, nor in any other manner to exchange the same, nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that prince or state from whom they obtained their commissions.” And article 25th, “It shall be lawful for the ships of war and privateers belonging to the said parties respectively, to carry whithersoever they please the ships and goods taken from their enemies without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever, nor shall the said prizes when they arrive at and enter the ports of the said parties, be detained or seized, neither shall the searchers or other officers of these places visit such prizes (except for the purpose of preventing the carrying of any part of the cargo thereof on shore, in any manner contrary to the established laws of revenue, navigation or commerce,) nor shall such officers take cognizance of the validity of such prizes, but they shall be at liberty to hoist sail, and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to show. No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties, but if forced by stress of weather, or the danger of the sea, to enter therein, par-

ticular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this treaty contained shall however be construed or operate contrary to former and existing publick treaties with other sovereigns or states. But the two parties agree, that while they continue in amity, neither of them will in future make any treaty that shall be inconsistent with this or the preceding article." But the 17th article of our treaty states, that French ships of war, and those which France shall have armed for war; as also the vessels of the United States or of their inhabitants, may conduct their prizes into the respective ports of the two nations; that neither asylum or refuge shall be given in their ports or havens to those who shall have made prize on the respective inhabitants of the two countries, and if they are forced to enter by tempest or dangers of the sea, they shall be obliged to go out as soon as possible. If we compare this article with those of the treaty made with Great Britain, it will be easily seen that during the present war it is destroyed by the first. For although the 25th article of the treaty with Great Britain states, "Nothing in this treaty contained shall however be construed or operate contrary to former and existing publick treaties with other sovereigns or states," and we ought to infer therefrom, that France, though not named, will always enjoy the advantages which article 17th of her treaty allows her: Yet it is very clear that the English will have the right of claiming the execution of the 23d and 24th articles of their treaty with the United States; that they will have during the present war, the privilege of conducting their prizes into the ports of the United States, and consequently the stipulations of the 17th article of our treaty are destroyed.

Moreover this article contains this clause, "But the two parties agree, that while they continue in amity, neither of them will in future make any treaty, that shall be inconsistent with this or the preceding article;" which seems to prevent the establishing of a new negotiation between the United States and France; since in a new treaty, France could not renounce the advantages secured to her by article 17th of her former treaty, and it is possible that they would be refused to her in virtue of that article.

Such, sir, are the observations which I have thought it my duty to present. I shall wait for your answer, in order

to transmit the treaty to the committee of publick safety of the national convention. It has never doubted the attachment of the American government towards France, and I am convinced that the present circumstances will furnish a new proof of their good intentions.

Accept, sir, the assurance, &c.

P. A. ADET.

No. 27.

The Secretary of State to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, July 6, 1795.

SIR,—I accept as a pledge of that harmony, which you are anxious to cultivate between our two nations, your letter of the 30th ult. received on the 1st. inst. at night. Let it be our unvaried practice to suffer no suspicion to ripen into an unfriendly sentiment, until it shall have been imparted to each other; and let us repel with firmness the artifice, by which ill affected persons, under the guise of attachment to the French Republick, endeavour to embroil it with the United States.

When you expressed to me on Monday last some uneasiness, which the report of the contents of the proposed treaty with Great Britain had excited in your breast, I the more readily informed you of my intention to ask the President's permission to furnish you with a copy, as I was convinced, that an entire view of it would not only enable you to state *all* the parts objectionable to our ally, but would also remove the prejudices which detached representations might occasion. Having delivered to you a copy, I am now to examine the provisions which seem to you irreconcilable with our engagements to France.

Upon this head, it has been often declared by the President of the United States, and is now repeated, that those engagements shall not, with his assent, be infringed. As far, therefore, as he is concerned, you need only prove, at any time, that a given measure will infringe it; and he will not countenance that measure. The same, I am persuaded, may be affirmed of the other branches of our government. But after a close scrutiny of the points which alone you have selected for animadversion, it is not

discerned that the rights of France are in any degree impaired.

In saying this, I must call to your recollection the manner in which the making of treaties is arranged by our constitution. The senate advise and consent to their being made ; the President ratifies them ; and the courts are afterwards at liberty to construe them, as particular cases arise, requiring their decision. The opinions therefore of the President are not obligatory on the courts. He judges for himself ; they judge for themselves ; and if in the interpretation of the one or the other, the rights of the French Republick are assailed, the accustomed modes of remonstrance and negotiation will still be open ; and the principles, upon which national redress is demanded, will still have their force.

After this explanation, I proceed to state to you the result of the President's reflections on your exceptions to the proposed treaty.

These exceptions are, 1st, that the 23d and 24th articles of our commercial treaty with France are violated by the 17th and 18th of the proposed treaty—2dly, that the 17th article of the former is destroyed by the 23d, 24th and 25th articles of the latter—and 3dly, that the last sentence in the first paragraph of the 25th article of the proposed treaty “appears to prevent a new negotiation between the United States and France.”

First, The essence of your first objection, as drawn from the reasoning in your letter, is reducible to this statement—By the treaty with France, hemp, flax, tar, pitch, ropes, cables, sails, sail-cloths, anchors and parts of anchors, masts, planks, boards, and beams of what trees soever, and all other things proper for building or repairing ships, shall not be reputed contraband of war ; but shall be reckoned among free goods, and may be transported in the freest manner by the contracting parties, even to places belonging to an enemy ; such only excepted as are actually besieged, blocked up, or invested. But the proposed treaty designates as contraband, timber for ship building, tar or rosin, copper in sheets, sails, hemp and cordage, and whatever may serve directly to the equipment of vessels (unwrought iron and fir planks only excepted) and they are declared to be just objects of confiscation whenever they shall be attempted to be carried

to an enemy. From hence you conclude, that the United States may freely carry into England all things proper for the building or repairing of vessels, without fearing any obstacle on the part of France; while they can carry none of them to France; and that they have *thus* granted to England a right which France enjoys not, and which in the course of the existing war inclines the balance in favour of England.

The United States have certainly opposed the extension of contraband, whenever the British government has sought to swell the catalogue. But it never could be denied, under the law of nations, and independently of a treaty, that materials for the building and repairing of vessels are contraband. The proposed treaty then does not *grant*, but *recognises* only a right to Great Britain, which even without that recognition she would have possessed and exercised.

This recognition might have been omitted or inserted, without changing the nature of the subject; though it was more natural, in commercial arrangements, to particularize the articles of contraband.

It was indeed anxiously desired, to diminish the list, as much as possible. But if no reciprocity could accomplish this end; if no equivalent could be offered by us to Great Britain, powerful enough to induce her to renounce her rights under the law of nations, what was to be done? Many reasons will occur, sir, why it was not to be extorted by force: to become a party in the war, was neither our policy nor the wish of your Republick: to become a party in the war for a cause which the armed neutrality itself never would have asserted, would have been supported by no civilized nation.

The United States have therefore wilfully surrendered no right, relative to contraband.

Nor is the treaty with France contravened by this acknowledgment of contraband. It stipulates that if France be at war, and the vessels of the United States carry naval stores to her enemy, French cruisers shall not capture them. The proposed treaty admits the right of Great Britain to seize such vessels going to her enemy. The inference is, that France has relaxed her strict rights, in consideration that the United States have relaxed theirs in this respect; but that Great Britain will not relax hers.

The treaty with France therefore remains uninfluenced by the proposed compact with Great Britain.

The true light in which the subject is to be viewed, is that which you have caught; when you allude to the effect which the right of Great Britain to seize naval stores, going from the United States to France, may have upon her interest, while she continues bound not to seize like stores, going from the United States to England.

Our treaty with France was entered into with a perfect knowledge on both sides that they were striking out from the class of contraband, articles which the law of nations denominated such. They were both apprized, that if the United States should be at war with Great Britain, the shipping of France, carrying naval stores to Great Britain, could not be seized by American cruisers; while the same shipping bringing naval stores to the United States might be seized by British cruisers. They saw therefore the reciprocity of the prohibition. Why then was not the case which has now happened, being foreseen, guarded against? Perhaps on account of this very reciprocity. Perhaps from a belief that it was not over-important. Perhaps, on the part of the United States, from a confidence that their internal supplies would be ample; and on that of France, that their home resources, their own shipping and convoys, would accommodate them with those stores. Or more probably neither of the contracting powers was disposed to cramp the commerce of the other, but upon the most demonstrable necessity: howsoever this may be, the proposed treaty does not vary the situation of France, nor better the rights of Great Britain in one iota of contraband.

There was a time indeed, when France felt herself absolved from the stipulation, that free ships make free goods, because Great Britain by capturing hostile property in American bottoms, rendered disadvantageous to France to spare British property in those bottoms. But the law of the 13th Nivose, in the 3d year, to which you refer, has banished that mode of reasoning, and has created a precedent for our mode.

Hitherto, however, I have spoken upon principles of *right*. Upon any other principles, and more especially upon those of hardship and injury to a friend, it shall be a topick of the negotiation now opening between us. With

the temper which will pervade the whole of it, I cannot doubt that some modification may be devised ; and it may be separated from the general treaty, so as not to be delayed by it.

Seco^d, In my judgment you misconceive the proposed treaty, when you imagine, that the English will have a right to claim the execution of the 23d and 24th articles of it, in derogation of the 17th article of our treaty with France ; that is to say, that in the course of the present war they may conduct their prizes, made from the French, into the ports of the United States. They will not possess such a privilege during the present or any other war with France. For “nothing in the proposed treaty contained, shall be construed or operate, contrary to former and existing publick treaties with other sovereigns or states.” The British plenipotentiary was here admonished of our prior engagements, and of our determination to postpone to them any new contract with Great Britain. Our treaties with France are saved by the general description, which was the most eligible form of expression ; because it was shorter, and equally well adapted to comprehend *all* our treaties. It is the same form of expression with that which was adopted in the year 1786, in the treaty between France and Great Britain.

The 40th article of the last mentioned treaty, and the 25th of the proposed treaty are in substance alike ; and yet it was clearly and properly understood, when the French and English treaty was made, that our commercial treaty with France was not in this respect shaken. We have at least never complained of any infraction of ours from this cause, and therefore are sincere in believing, that France can be as little affected by our treaty with Great Britain, as the United States were by hers with Great Britain.

In your quotation of the 23d article of the treaty with Great Britain, you observe, that *the vessels* of the English are to be received with hospitality in the ports of the United States. They are the “*ships of war*,” the publick navy, not the *privateers*, which are to be so received. Now the British ships of war are not prohibited by our treaty with France from visiting our ports, unless under certain exceptionable circumstances. From these they are not released by the proposed treaty : because our

treaty with France, which is a supreme law of the land, is decisively contrary.

The 24th article of the proposed treaty is, with a very small and unessential difference, the same with the 16th article of the French treaty with Great Britain. And here this remark occurs; that the proposed treaty saves *every* right of France, arising from our treaty of commerce; but the treaty between France and Great Britain does not by any general or particular expression save the rights of the United States, which might stand in opposition to that 16th article. We have never remonstrated; because we always thought ourselves secure under the faith of France and the law of nations.

Third, Upon the third and last head of objection, which you urge against the proposed treaty, little need be said. You shall continue to enjoy your rights under the 17th article of our treaty with France. We will not ask you to renounce the advantages which that article assures to you. The prohibition, on which you lay so much stress, is not against *past* but *future* treaties. If a new treaty of commerce with France, including the same matter with the old one, would be prevented by the 25th article, the consequence may be easily avoided, by declaring, that so much of the old one, as is connected with any particular, for which it may be desirable to retain a priority shall remain in force. This is a remedy so obvious, that I flatter myself, it will remove any difficulty in the way of a new negotiation.

Should an embarrassment still hang upon these points, I must entreat you to afford me an opportunity of meeting them before your communications are despatched to the committee of publick safety.

I have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 23.

Mr. Pickering, Secretary of War, charged with the Department of State, to Mr. James Monroe, Minister Plenipotentiary at Paris. Department of State, September 12, 1795.

SIR,—The office of Secretary of State being at present vacant by the resignation of Mr. Randolph, I have it in

command from the President to acknowledge your letters dated November 7th, 1794, January 13, February 12, 18, March 6, 7, 12, 13, May 7, 17, June 14 and 26, and to communicate such information as the present state of things appears to require.

You have already been furnished with a copy of the treaty lately negotiated between the United States and Great Britain; but lest that should have miscarried, you will find another enclosed. This treaty has, after the most mature deliberation, been ratified by the President on the condition proposed by the Senate, and has been transmitted to London. On the presumption that it will receive an equivalent ratification on the part of Great Britain, and thus become a compact between the two nations, it is proper, that you should be possessed of the opinions of the government, especially as it appears probable from your letters and from the movements of disaffected persons here, that unfavourable impressions upon the government and people of France may be apprehended. As we have ever been most sincerely desirous of cultivating friendship with that nation, the most prompt and candid measures were taken in every stage of the negotiation to produce tranquillity and satisfaction, which the rules prescribed by custom in such cases would justify or permit: the result now made publick will evince that the rights of France, whether founded on the laws of nations or their treaties with us, remain unviolated and unimpaired.

It is already known to you, that Mr. Jay was specially instructed by the President to stipulate nothing with Great Britain contrary to the engagements of the United States to France. This part of the President's instructions was officially communicated to Mr. Fauchet, the minister of the Republick, and independently of the obligation impressed upon our envoy, the honour of the government became pledged to refuse the ratification of any article derogatory from our engagements to France, which might be inadvertently admitted by our negotiator.

Accordingly, soon after the decision of the Senate had been given, and previous to the ratification by the President, Mr. Adet, the present minister, was furnished with a copy of the treaty and requested to communicate his observations thereon. A copy of his letter and of the reply of the Secretary of State are enclosed, by which you will

perceive the nature of the objections, which were urged, and that such explanations were immediately given and such constructions adopted, as must have been satisfactory. We infer this no less from the explanations themselves, than from the subsequent silence of the minister.

The late conduct of Great Britain in detaining the vessels of the United States laden with provisions and bound to France is however calculated to create inquietude, it is therefore proper to explain the 18th article more particularly than Mr. Randolph has done ; especially as this part of the treaty has been misrepresented in this country, as being unfriendly to France.

It cannot be doubted, that the United States have a powerful interest in diminishing by treaty the catalogue of contraband articles as much as possible ; to this they are invited no less by their pacifick policy, which inclines them to cultivate and extend neutral rights, than by the operation of the law of nations upon several valuable articles of export, the produce of our own country. No nation can be suspected of insincerity in the pursuit of objects connected with its immediate interest ; accordingly the most zealous exertions have been uniformly made by the United States to establish principles favourable to free commerce. A time of war was however most unfavourable for this purpose, especially when the object, as in the present case, was to induce a powerful maritime nation, to make concessions in favour of a neutral and defenceless commerce.

The result of the negotiation with Gréat Britain has therefore shown, that she will not relax, in our favour, from the strict maxims of the law of nations, defining contraband, the principles of which are adopted in the treaty. Thus, though the first clause of the 18th article embraces several kinds of merchandise, which the policy of modern times has by special treaties admitted to be articles of free commerce, yet it is believed, that not a single one is included as contraband, which has not been ranked as such by approved writers on the law of nations. It is not therefore correctly said that we have *relinquished* any neutral rights, the exercise of which would have been beneficial to France ; and yet this is the strongest charge which has been adduced against the treaty with the shadow of reason. The treaty has barely recited in the list of contra-

band what was before so, under a law, which we could not mitigate; and though we were desirous of relaxing the rigour of this law, yet a recital of it, in the present treaty, was the best which could be done, and was necessary, in order to admonish our maritime and commercial citizens of a risk, which really existed.

The second clause of the 18th article, clearly refers to the doctrine asserted by Great Britain, that provisions may become contraband, when destined to places not invested or blockaded. To this pretension which is contrary to our interests, and as we are inclined to believe unwarranted by the law of nations, especially in the extent asserted by Great Britain, we could not accede. The opinions of our government on this subject formerly expressed are well known to you, being amply detailed in the correspondence of Mr. Jefferson and Mr. Pinckney in the year 1793. Though we have not been able to induce Great Britain to relinquish her construction, we have not abandoned ours; and the result has been a stipulation, that whenever provisions and other articles not generally contraband shall become such, and for that reason be seized, they shall not be confiscated, but paid for with a reasonable mercantile profit, including freight and the expenses incident to the detention.

It is obvious that if the British construction of the law of nations were admitted to be just, the stipulation in the treaty would be favourable to neutral commerce; we do not however admit their construction; the contrary appears from the treaty. We have only guarded by such means as were in our power, against the full effects of a doctrine, which has been and which will be strenuously opposed by all reasonable means which may offer.

Whether this pretension on the part of Great Britain was of such a nature as ought to have been resisted by force, is a question, which it pertains to the proper authorities of the United States to decide. They are the exclusive judges and competent guardians of whatever concerns our interests, policy and honour; and on these subjects, they will never ask the advice nor be governed by the counsels of any foreign nation whatever. We acknowledge ourselves bound to stipulate nothing which may derogate from our prior engagements. This we have not done by the present treaty, and this we will never do.

Even in cases where we are not bound by treaty, we will not stipulate to surrender our rights as a neutral nation to the injury of our friends; but we must be left to determine in what manner we can most beneficially obviate an evil, and when it is proper for us to repel an injury. The present situation of Europe admonishes us to avoid the calamities of war. Having attained the possession of a free and happy government, and having nothing left to hope or desire beyond our present internal enjoyments, our solitudes are principally attracted to the vexations and depredations committed upon our commerce: these are indeed great, and are inflicted upon us by all the parties to the war, notwithstanding which our commerce has continued to be lucrative and extensive, though unfortunately for us, as we have no means of protecting it against injustice, it is vulnerable in the same proportion that it is extensive.

The degree of security which we enjoy is well known to depend more upon the common wants of the nations at war than upon any exertions which we can immediately make of an offensive nature. Indeed nothing of this kind could be attempted by us without a total sacrifice of our commerce. How preposterous is that policy, which requires us to abandon and destroy the very object, for the preservation of which, we are invited to commence hostilities.

It may not be amiss to dilate on the consequences of our engaging in the war with Great Britain.

First, Seeing she has the command of the sea (and appearances strongly indicate that she will maintain that command) our commerce might in one year be annihilated, and thousands of our seamen be shut up or dying in jails and prison ships. In addition to her fleets and cruisers now in commission, privateers would swarm, as soon as an object so alluring and so assailable as the American commerce should present. If we look back to the two last years of our revolution war, a judgment may be formed on this point. A striking defect in her naval arrangements in preceding years, left our ports open for the entry of commerce, for the equipping of privateers and the introduction of prizes. A different arrangement in the latter period of that war totally changed the scene. The small privateers were hauled up, as no longer able to

cope even with their armed merchantmen, and the larger privateers were taken. Our mercantile shipping fell, at the same time, a sacrifice to the vigilant operations of the British navy. At the present moment her naval power is extended beyond all former examples; while that of her enemies is at least not increased.

Second, Our landed as well as commercial interests would suffer beyond all calculation. Agriculture, above the supply of our own wants, would be suspended, or its produce perish on our hands. The value of our lands and every species of domestick property would sink.

Third, The sources of revenue failing, publick credit would be destroyed and multitudes of our citizens now depending on its preservation, be involved in ruin. The people at large, from the summit of prosperity would be plunged into an abyss of misery too sudden and too severe patiently to be borne. To increase their calamities, or make them felt more sensibly, direct taxes must be levied to support the war, and it would be happy for us if we could contemplate only a foreign war in which all hearts and hands might be united.

Fourth, Under the circumstances mentioned, a war with Great Britain would be essentially injurious to France. With our own principal ports blocked up, and her sea coast lined (as at present) with British cruisers, there would be an end to our intercourse with France: and it is by our commerce only that we can give her any valuable aid. Men she wants not; and if she did want we could not transport them. But while we continue our neutrality, the benefits we may render to France and her colonies are immense. And though the renewal of the order for capturing neutral vessels laden with provisions, while extremely vexatious to us, adds to their distresses; yet the tenour of the 13th article of our late treaty with Great Britain, though with some a subject of clamour, will remedy in a degree the mischievous tendency of that order. For the article, far from giving a right to Great Britain to capture our provision vessels, only prescribes the course to be taken, when by the law of nations provisions become contraband. They are not to be confiscated, but paid for with a reasonable mercantile profit. What will be the operation of this provision? Will it check or encourage adventures to France? We think the latter.

For if our vessels reach the French ports, all the expected profits of the voyage will be gained. If they are taken by the British, although there may be less profit, there can be no loss. Consequently, instead of discouraging, this article will rather promote the exportation of provisions for France; for in the event of *arrival* or *capture*, the American merchant is certain of making a *profitable voyage*.

That this article in the treaty respecting provisions has had no influence in the measures of the British cabinet is clear to a demonstration: for the order, so far as we are informed, extends to other neutral nations with whom there is no similar stipulation. And before the article existed, we too well know the conduct of that court was the same. And claiming as an independent nation the right of judging in such case, it was evidently expedient for the United States to obtain from her some stipulation, which, without admitting her claim, would not leave our commerce to future spoliations without any definite means of liquidation or redress.

Some men, forgetting their own professed principles, when they advert only to our relation to Great Britain, forgetting that they are the citizens of an independent state, have said, that while France, with whom we have a treaty of amity and commerce, was at war, we ought not to form with her enemy a similar treaty, by which our situation would be changed. But where is the principle to support this rule? and where will it find any limits? We have treaties with many other powers, one or the other of whom, may be always at war: are we never then to make another treaty?

Others have said, France will be *displeased*. This we should regret for two reasons: one because we really wish to please our old and friendly allies: the other, because we desire to see, and doubt not we shall see, her deportment towards us correspond with her own fundamental principle, that every independent nation has an exclusive right to manage its own affairs. All our external duties centre here—that in our new engagements we violate no prior obligation.

That France should manifest a watchful jealousy of any connections we might form with her ancient and inveterate enemy, is perfectly natural. It is the same spirit which

prompted her to afford us that efficient aid which was so important to the achieving of our independence. By breaking off so large a portion of the British empire, the power of a formidable rival was essentially diminished. No wonder she should now be alive to the remotest prospect of reunion; not of government, but of interests and good will. But to the following positions you may give all the solemnity of truths.

First, *That the late negotiation has not proceeded from any predilection in our government towards Great Britain.* We abide by our original declaration respecting the British: "We hold them, as we hold the rest of mankind, enemies in war, in peace friends."

Second, *That from the remembrance of a long, bloody and distressing war, from which we were just beginning to recover, and to taste the blessings of peace; whatever even seemed to tend to a renewal of it, was seriously deprecated.*

Third, *That there were many causes of difference between us and Great Britain, the adjustment of which admitted of no longer delay.* One was the detention of the western posts, under a real or affected belief that the United States were the first to infringe the peace of 1783. From this detention resulted a bloody and expensive Indian war; a loss of revenue by a suspension of the sale of lands; and a deprivation of the fur trade. To these were added fresh excitements to a more extended Indian war, and the vexations and ruinous spoliations of our commerce. Our differences on these and other grounds had risen to a height that required an immediate remedy. War or negotiation were the alternatives. We chose the latter. Had this failed, war seemed scarcely avoidable. But in that case, these good effects were counted upon. The consciousness of using the proper means of averting so great a calamity; union among ourselves, when war should have appeared inevitable; and division among our enemies who should have refused an amicable settlement of our just demands; besides which we gained time for preparation.

Fourth, *That the commercial part of the treaty though not unimportant, was but a subordinate object, and at the same time not a new measure.* This is well known to every well informed citizen of the United States. It is a fact, that a commercial treaty has been sought after ever since

the peace ; under the old government, and since the establishment of the new one. It is a fact, that upon the arrival of Mr. Hammond the British minister, and an intimation that he was empowered to enter into commercial arrangements, he was met with avidity by Mr. Jefferson, the Secretary of State : and when it was discovered that his powers extended only to an inconclusive discussion of this subject, disappointment and chagrin were the result. It may be added that measures have been proposed and powerfully supported in the legislature, the sole object of which was to force Great Britain into a commercial treaty.

Fifth, *That the government of the United States is sincerely friendly to the French nation.* The latter doubtless believe that the body of American citizens are well affected towards them. The belief is well founded. But it is equally applicable to those in the administration of the government. If any thing could weaken this general attachment, it would be a recurrence to such disorganizing projects, and outrages on the sovereignty and dignity of the United States, as marked and disgraced the ministry of Genet. The precipitate, and in the main, ill-founded resolutions of a few small popular meetings, are not to be taken as true indications of the American sentiment : very different is the opinion of the great body of the people. These are beyond example prosperous, contented and happy. Where any symptoms of another nature have appeared, they are to be traced to ignorant or perverse misrepresentations of the treaty. This, as it becomes better understood, is more and more approved.

That the treaty would settle every point in dispute entirely to our satisfaction, and secure to us all the commercial advantages we could wish for, no reasonable man could expect. Our antagonists too had claims, opinions and wishes. And where there are opposing interests, nations as well as individuals are likely to make erroneous estimates of their respective rights. When therefore every argument was exhausted, and found unavailing to settle the disputed points more to our advantage, the terms as we see them were adopted. The Senate after a very deliberate discussion and consideration of the treaty, in all its relations, advised its ratification, on the condition stated in their resolution : and on that condition it has

received the President's sanction. It now rests with the king of Great Britain to give or withhold his assent. We are disposed to think that his assent will be given: for it is the interest of Great Britain not to increase the number of her enemies, or to deprive herself of the benefits of a commercial intercourse with the United States. It is not less our interest to remain at peace. And the President as the first minister of good to the people, is bound to take all reasonable and prudent means to preserve it. Peace is the ordinary and eligible state of our nation; and your duties as its agent abroad result from this condition of our country. And as nothing has yet happened which renders it in any degree probable that the United States will become a party in the existing war, every intimation which may invite the expectations and enterprises of the French government, calculating on such an event, is therefore carefully to be avoided.

With great respect, I am, sir, &c.

TIMOTHY PICKERING.

No. 29.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick, near the United States, to Mr. Randolph, Secretary of State of the United States. New York, the 2d Vendemiaire, 2d year of the French Republick, one and indivisible, (Sept. 23, 1794, O. S.)

SIR,—A recent violation both of the sovereignty of the French Republick and of the treaties you have contracted with her, has just taken place at New York. Some men, in the employment of the customhouse I suppose, went on board the *Favourite*, a French ship of war, and carried off effects belonging to the Republick: one of the persons who executed this order insulting to the nation I represent, dared to threaten the officer instructed to hoist our flag for the *fête* of the 21st September with a stroke of his sword. His threats terminated by hoisting the flag of the customs. This was respected by the French: but ours was insulted in an outrageous manner. I request justice against the authors of this infraction of the law of nations.

It is to a free government I address myself, and I shall obtain it.

It is pretended, sir, at least from every thing I can learn, that a privateer fitted for a cruise had deposited arms on board, and that this pretext was used for visiting and pillaging the *Favourite*, a vessel answering as a store ship for the Republick, until she should be repaired. Were this the fact, they ought to have applied to me. The conduct I have frequently discovered in similar cases, the promises I have made to prosecute those who should violate the neutrality of the United States, the punctuality with which these promises have been fulfilled should have induced those officers to inform the functionaries of the French Republick, even if it had not been their duty to do so. Nothing can justify this outrage. If an unfaithful or weak keeper had committed a fault, it were sufficient to inform me of it; I should have delivered him to his proper judges, and the Americans would not have overleaped their rights and offended an ally attached to them by so many ties.

Accept my esteem,

JH. FAUCHET.

No. 30.

Mr. Randolph, Secretary of State of the United States, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, Sept. 25, 1794.

SIR,—I regret extremely that any citizen of the United States, and more especially if he be in authority, should offer either outrage or insult to a vessel of the French Republick. I have accordingly written to the attorney of the district of New York, to inquire into and report the facts, as you will perceive from the enclosed copy. The course might have been shortened by directing him to proceed in the case, as the law directs. But this has not been adopted because we wish to reserve to ourselves the decision in this particular, as it is suggested that a publick officer is concerned, and we take an interest in causing justice to be done to the French Republick, as far as possible, under our own eye.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 31.

Mr. Randolph, Secretary of State, to Mr. Harrison, District Attorney of New York. Philadelphia, September 25, 1794.

SIR,—I have the honour of enclosing to you, the translation of a letter from the minister of the French Republick, complaining of an outrage on a French vessel of war. Resolved as we are to act with good faith and friendship towards our ally, I must request you to inquire into the facts; and transmit what shall be found to be an accurate state of them; in order that government may proceed to do what is proper and honourable on the occasion.

I am, &c.

EDM. RANDOLPH.

No. 32.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, November 17, 1794.

SIR,—The Executive of the United States, being obliged to collect information of facts at a distance through the publick officers, and having a confidence in them, it was conceived sufficient in the first instance merely to transmit to you the evidence which had been obtained respecting the Favourite. Hence in the letter which I had the honour of writing to you on the 22d ultimo I did no more than note the enclosures, reserving any reflections until I should be ascertained on your part, whether the allegations were true.

The opinion which the President has formed, relieves both you and myself of no small difficulty in comparing and weighing the testimony.

He has thought proper to instruct me to inform you, that on the faith which he always reposes in your assertions, he takes these points for granted: that the Favourite is a publick vessel of war, bearing the commission of the French Republick: and that no contravention of the act prohibiting the exportation of military stores, was

meditated in the application of those which were found on board.

The President highly disapproves that a publick vessel of war belonging to a foreign nation, should be searched by officers of the customs, upon a suspicion of illicit commerce. The propriety of representing such a suspicion to the consul of that nation, or the commander of the vessel, will not be controverted, this being a course respectful and customary. A general instruction will therefore be given to pursue this course ; with the view, that if it should be ineffectual, the government of the United States may adopt those measures, which the necessity of the case, and their rights may require.

A particular instruction founded on the same principles, will be also forwarded to the collector of New York ; with this addition, to discontinue the prosecution against the property, and restore what may be within his power or command. At the same time I must repeat the assurance which we entertain, that you will prevent the stores from being used in any manner, contrary to the act before referred to.

I flatter myself, sir, that this reparation of what is past, and the precaution against the future, will manifest such a disposition in our government, as will induce you to approve the decision, which a sense of justice imposes upon the President, to wave any further measures. For the appearance and circumstances of the Favourite might have misled the best intentioned man into a misapprehension of her real character. And in truth, something is due to the consideration that in our new situation it cannot be expected that all our officers should meet every occurrence with a correct knowledge of the usages of nations.

An insult to the French flag will not be tolerated by the President, whensoever he can prevent or punish it. But the depositions do not place this subject in so clear a light, as to prove its existence, or designate the culpable person. It is the President's purpose therefore to cause the officers of the customs to be admonished to respect your flag, and if this be not satisfactory, and you are still persuaded, that an insult has been committed ; I shall be ready to concur in any arrangement, which may be convenient, for the full examination of such other witnesses, as may be produced. I have the honour, to be, &c.

EDM. RANDOLPH.

No. 33.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Department of State, February 7, 1795.

SIR.—This moment I have received the enclosed copy of a letter from the collector of New York, to the Secretary of the Treasury. Although the subject of the Favourite has been long ago adjusted, I think it proper to hand to you any explanation, which may come to my hands.

I have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 34.

Mr. Lamb, Collector of New York, to the Secretary of the Treasury. New York, November 29, 1794.

SIR.—I acknowledge the receipt of your favour of the 22d instant, respecting the articles seized on board the French ship the Favourite, and agreeably to your directions, have ordered them to be restored.

At the time the seizure was made, the Favourite having been totally dismantled, her crew sent on board other ships of war, and her sails, rigging and other materials, having been sold at publick auction, she was considered as a hulk; otherwise the event would not have taken place.

With respect to the charge, That the officers of the customs had pulled down the national flag on board of the above mentioned vessel, and hoisted another in its place, it is groundless, as will appear by the papers transmitted to the Secretary of State, by Mr. Harrison, the district attorney. I am with great respect, sir, &c.

JOHN LAMB.

No. 35.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Department of State, August 14, 1794.

SIR,—Information has been given to the President of the United States, that the privateer called la Carmagnole,

which has always been considered as one of those fitted out in opposition to the sense of our government, is now in the river Delaware. This vessel is represented to retain still her warlike apparatus. It is probable, that you have not been informed that she was ordered to quit our ports, or to be dismantled. But notwithstanding this injunction, her military qualities are not yet laid aside, and she continues to go out and come into our ports. I am confident, sir, that you will disapprove of this proceeding, and that you will render it unnecessary for the President to execute the determination which he finds himself compelled to make under the circumstances of the case, that la Carmagnole be dismantled. The readiness with which you complied with the wish of the government on a similar occasion induces me to hope that you will issue orders for dismantling her; and prevent the President from taking on this subject, those measures which he wishes to avoid.

The expedition with which this privateer moves will naturally suggest to you the propriety of my requesting that your interference should be as prompt as possible.

I have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 36.

TRANSLATION.

Mr. Fauchet, Minister Plenipotentiary of the French Republic, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 29th Thermidor, 2d year of the French Republic, (16th August, 1794, O. S.)

SIR,—I inform you that the uneasiness testified by the government of the United States, relative to the Columbia, which was supposed to be in the Delaware, is groundless. This vessel received an order from me on the 4th instant to put to sea *immediately*. If she has not executed it, she must have been prevented by the English forces or by the necessity of making some indispensable repairs, before the voyage she is about to undertake. Accept my respect,

JH. FAUCHET.

No. 37.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, August 20, 1794.

SIR,—I should have done myself the honour before this day of transmitting to you a copy of certain rules, instituted by the President of the United States in relation to the belligerent powers, if I had not taken it for granted, that your intercourse with your predecessor had rendered it unnecessary. But I take the liberty of now enclosing them, as having a direct connexion with my letter to you of the 14th instant, and with your reply on the 16th.

The correspondence from the Department of State with Mr. Genet, will inform you of the motives upon which these rules are founded. They have created a system of obligation on our part towards those powers, and therefore require our attention.

But the Carmagnole (or Columbia) has been the subject of particular letters from governour Clinton to Mr. Genet and the French consul at New York; and the result has been an assurance, that she should no longer offend those rules. This assurance has produced a great degree of anxiety, that she should not now enter our ports, under the circumstances which were first offensive to the government, and contrary to its sense as has been often expressed concerning her. It is very far from the wish of the President that your despatches should be at any time interrupted. The step of dismantling which is desired, is merely to fulfil an engagement, which has been frequently made.

Whether the Carmagnole be *at present* in the Delaware, we cannot at this place ascertain. If she has sailed, I have only to communicate to you the hope and expectation of the President, that you will by your orders prevent her from returning to our ports in her military equipment. If she has not sailed, we must repeat our confidence, that you will cause her to be dismantled. The rules above referred to will not permit an illicit privateer, as she has been deemed to be, to make any reparations within the United States.

Permit me to request an early answer to this letter; and to learn, that you will direct the necessary measures to be

immediately adopted, and cut off the painful necessity of measures adequate to the end, being pursued by the government. I have the honour, sir, to be, &c.

EDM. RANDOLPH.

No. 38.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 4th Fructidor, 2d year of the French Republick, one and indivisible (21st Aug. 1794, O. S.)

SIR,—I told you verbally, and repeat it in writing, that the *Cornelia* and the *Columbia* had sailed for France. Then my intention was that they should not return armed into the ports of the United States. But they were compelled to take shelter by the pursuit of the English vessels of war, which at this time block up all your ports. It would be as unjust as unreasonable to impute to them as a crime this return, which was rendered necessary by so unhappy a circumstance; unless it be wished that these two vessels should become the prey of the English; and I avow it with profound sorrow, that I have been tempted to entertain this opinion, when I learnt that at New York, orders had been given to the *Cornelia* immediately to quit that port, although it was known that two English frigates were to have seized her on her departure. But, sir, it is too painful for me to harbour a doubt injurious to the publick officers of a free nation, to give myself up to this impression, and at the same time it is too grateful to me to prove with what strictness we fulfil our treaties and our engagements, to omit giving to you the following details.

The first of these two vessels, the *Cornelia*, which is at New York, is about to go to Boston, to be there completely dismantled. The second, the *Columbia*, which was in the *Delaware*, departed thence on the 11th of this month. I am surprised, sir, that you were not informed of her departure with as much care as you were of her arrival. Perhaps it was not the duty of the same person to give the two advices which might have prevented your complaints. But, sir, when the federal government fulfil

with so much exactness the new obligations, which it has imposed upon itself in relation to England, is it not just to require from it the same scrupulous observance of sacred treaties, which it has long since contracted with France? Why then is an asylum refused to an unfortunate barque, which in her flight had thrown into the sea some of her cannon and of her water, when it is given, though against the tenour of those very treaties, to the vessels of war which have taken prizes from the citizens of the Republic? Without doubt, sir, this violation, which is so fatal to us, takes place through forgetfulness only. It would be horrible to me to attribute it to any other motive: therefore I content myself with subjoining here an extract of the 17th article, in order to recall it to your remembrance.

“Art. 17th. And on the contrary, no asylum or retreat shall be given in their ports or harbours to those who shall have taken prizes from the subjects of his majesty or the said states; and if they are compelled to enter them by tempest or the danger of the seas, they shall be obliged to depart as soon as possible.”

Neither tempest nor the danger of the seas have compelled the English vessels of war to enter your ports; notwithstanding, they have been there supplied; notwithstanding, they remain there to interrupt your commerce and our supplies! and notwithstanding, we are your nearest allies. Accept, sir, &c.

JH: FAUCHET.

No. 39.

Mr Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republic. Philadelphia, Sept. 7, 1794.

SIR,—Feeling, and at all times acknowledging as the President of the United States does, the obligations of our treaties with your nation; and banishing every consideration which comes into competition with them, he read, not without regret, the following passage in your letter of the 21st ult.

“Why then was an asylum refused to an unhappy barque, which in its flight had thrown into the sea a part of its cannon and of its water, while it was granted, con-

trary to the tenour of these very treaties, to vessels of war, which had made prizes from the citizens of the Republick? Without doubt, sir, this violation, which is so fatal to us, has arisen from forgetfulness only. It would be horrible to me to attribute it to any other motive. I therefore content myself with subjoining hereto an extract from the 17th article, to recall it to your remembrance," &c.

There was, sir, during the existence of your predecessor's functions, a period at which we were obliged to summon all the strength and fervour of our friendship for the French Republick, to combat the various forms of aggression, which he offered to our government. But let these be now buried in eternal oblivion, sealed, as it has been, by the justice rendered to our wishes, in the removal of him, and in the deportment of his successor. This period is therefore revived for a moment, merely for the purpose of referring you to those of our remonstrances, which are to be found among your papers of office, and which speak the sensibility of the United States, at the equipment of privateers within their limits. And it is recollected even now, not from the most distant apprehension that the measure will be repeated under your countenance, but to point to the reasons which produced our solicitude on the occasion.

Except vessels of this description, all belonging to the French Republick or French citizens have been admitted into our ports with cordiality. Where an asylum in general has been refused to any, it was a consequence of an infraction of our sovereignty. If, in the particular instance to which you allude, the denial of asylum has been aggravated by circumstances of improper severity, it is more than we knew, until your communication: it is what the President would absolutely disapprove.

If your interpretation of the treaty of commerce be accurate, that is, if no ship of war, which had made prize of French vessels, could be received into our ports, still no complaint of this kind has yet reached the Executive of the United States from any functionary of France, or any other authentick source. But it would be uncandid to conceal from you the construction, which we have hitherto deemed the true one. The first part of the 17th article relates to French ships of war and privateers, entering our

ports with their prizes: the second contrasts the situation of the enemies of France by forbidding such as shall have made prize of the French; intimating from this connexion of the two clauses, that the vessels forbidden are those which bring their prizes with them. It has been considered that this section of the treaty was principally destined to the withholding of protection or succour to the prizes themselves. Had it been otherwise, it would have been superfluous to have prohibited in the 22d article foreign privateers from selling what they have taken in the ports of the United States.

Be assured, sir, of this truth, that it would be a painful reflection to the President of the United States, if our treaties with the French nation had ever been infringed with his assent; and farther, that if they ever shall be, he will be ready, as he always has been, to hear and inquire, and to cause offences against them to be punished, errors to be rectified, and injuries to be duly compensated.

I have the honour to be, &c.

EDM: RANDOLPH.

No. 40.

TRANSLATION.

Joseph Fauchet. Minister Plenipotentiary of the French Republic, near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 2d of the Sins Culotides, 2d year of the French Republic, one and indivisible, (18th September, 1794, O. S.)

SIR,—In assuring me of the true sentiments of the President you do no more than confirm the opinion I have entertained of his virtues, and especially of his sincerity and attachment to the sublime cause of liberty, for which he has fought, as the French republicans are now fighting. It is very agreeable to me to partake of this opinion with all those who abhor despots and love men. But how, sir, must I have excited his regret by laying before him the attacks which I believe to have been made upon treaties which unite our two nations? He has not done the injury, and he can apply the remedy. It was not then reproaches I made to him, but an opportunity I afforded him of exercising his natural inclination to do what is just and be-

coming the nation he represents, and by whom he is justly venerated.

In speaking of his regret, you excite my own, when duty imperiously requires me to resume a discussion rendered necessary by your answer and the reflections it contains, rendered necessary still more by the recent persecutions which the French are made to suffer by the servile submission of the subaltern agents of the Executive of the United States to the requisitions of those of George III. Unfortunately I cannot but be embarrassed in the choice of facts which occur to support this last assertion. Before I cite them, it is necessary for me to correct an important error which has slipped into your despatch. You tell me "If your construction of the treaty of commerce be accurate," &c. This expression, sir, implies two facts, which I equally oppose. The first is, that the article, which I have cited, may be susceptible of several constructions; the second is, that I have given an arbitrary meaning to this article. You forsake these two suppositions, to construe in a manner favourable to our enemies a part of the treaty which it is necessary totally to retrench, if your interpretation is adopted.

The example of candour you have given induces me to avow, that I observe with pain the efforts you have made to demonstrate to me, that the import literally expressed is not the true import, and to substitute an ambiguity for a very clear and positive stipulation.

I recur to your reasoning.

"The first part of the 17th article relates to French ships of war and privateers, entering our ports with their prizes; the second presents a precise contrast. The connexion of the contrast which exists between these two clauses, therefore intimates that the vessels forbidden are those which bring their prizes with them."

The best answer I can give to this paragraph is to request you to read the same 17th article over again. You will thereby see at once, that the said vessels (capturing) or their prizes, (which proves, that both have an equal right to this privilege) cannot be arrested or seized, whether, &c. and in the second part of the article you will find, "That on the contrary, no shelter, &c. shall be given, *to such as shall have made prize,*" (not to such alone as shall bring in their prizes, as you seem to think; *but to such as*

capture.) It may be well to observe to you, sir, that by capturing vessels, is always understood the whole fleet, and not the particular vessels of that fleet which may have manned the prizes. The matter then is not alone, as you seem desirous of understanding it, to refuse all succour to prizes; but also to such as shall have made them. If you pursue the reading you will see, "That if they should come in, being forced by stress of weather, or the danger of the sea, all proper means shall be used that they go out and retire from thence as soon as possible." Hence the want of repairs after a battle, of which a prize might be supposed to be the consequence, a desire to take in provisions, in order to prolong a cruise without returning to the ports of their own nation, are not, as you esteem them, sufficient titles for our enemies to obtain an entry into your ports. Hence the principal advantage which the allied nations wished mutually to assure to each other by this article, was not so much to make the difficulty of disembarrassing themselves of or selling their prizes felt by their enemies, as of taking from them the facility of putting speedily to sea after an engagement, and obliging them to return to their own country to victual and supply themselves with provisions and water. This consequence naturally follows from the foregoing propositions, which would otherwise be without meaning; and therefore would discover nothing but folly in the framers of the treaty, which is not supposable. If their object was only to prohibit vessels of war of the enemy to enter a port with their prizes, and if the intention of the contracting parties could have been what you suppose, they would have formally expressed it: they would not have said, "Such as shall have made prize," but the vessels with their prizes. For my part, I cannot see in a treaty what it does not contain, and I cannot help seeing in it what it clearly expresses. I closely adhere to the letter, when it has an obvious and determinate meaning. I understand, that the captors of French property should be driven from your ports. Now English ships have made prizes: I thence conclude, that English ships should not find shelter in your ports: I thence conclude, that the asylum granted to them is a violation of our treaties. If it be true, as you wrote me, that the French functionaries and my predecessors never complained of this violation, it was because, far from hunting for causes of

complaint, when we had reason, we have always respected the situation of the American government ; it was because the audacity and vexations, practised by the English against your commerce and the law of nations, increase in proportion as they give you assurances of peace. It is far from my thoughts to censure the long patience with which your government supports the perfidies of England. I respect both its motives and its secrecy, and the means, in fine, which its prudence suggests to obtain justice : but I am grieved to see the commercial connexions of the French Republick and the United States entirely dissolved by so many harassings : I am grieved to see the seizures which the British ships at this time make of American vessels sailing for France, or even returning thence, or which are supposed to be bound for a French port : I am grieved to see the United States suffer in silence the insolence of English proclamations, which are executed even upon their coasts : I am grieved, that even at this moment an alliance between a free people and a Machiavelian government is talked of. In supposing this rumour to be true, however monstrous such an alliance may be, I rely so much on the sincerity with which the Executive of the United States keeps its engagements, as still to demand with confidence their execution.

An occasion now presents itself. Even adopting your construction of the treaty, it has just been violated at Norfolk. The English frigate *Terpsichore* anchored there with a French privateer, called *La Montagne*, which she had taken. The consul of the Republick complained in writing to the governour of Virginia against this infraction, and a length of time elapsed without the governour's deigning to give him an answer. I expect one from you, whose principles I know, more speedy no doubt and conformable with justice. This delay gives rise to a very painful reflection ; it is, that there is the greatest fervour to satisfy the unjust demands of our enemies, and the greatest coldness to satisfy our lawful demands. Norfolk will furnish the two proofs of what I advance ; the execution of our treaties was claimed ; but no answer was given. A vessel whose mast was broken in her passage to Guadeloupe, where she was carrying provisions, was obliged to return to Norfolk. It was immediately wished to arrest her on the assertion of some Englishmen, and the pro-

ceedings which were to be employed, were so odious, so insulting to the publick officers of the Republick, that I am obliged to enter into some details relative to this affair.

A Frenchman learned at Charleston the recapture of Guadaloupe; his first feelings excited him to go to the assistance of his newly arrived brethren; he purchased a schooner, which he loaded with provisions; intending to avail himself of the American papers belonging to the vessel he had bought, it was justly observed to him, that agreeably to the laws of the United States, the transfer of a vessel to a foreigner made it necessary to give up the papers; he was then obliged, agreeably to the laws of France, to take out from the consulate a certificate of the purchase, to serve him until his arrival at the first French port.—For the defence of his property he put on board thirteen cannon, which he possessed before the purchase of the vessel. He notified the governour of South Carolina of it, who, finding him armed simply for his own defence and not for a cruise, made no objection. He sailed: an accident obliged him to go to Norfolk. He had hardly arrived, when it was wished to arrest him. I leave you to judge of the indignation of a man, who, impatient at the space which separated him from his fellow citizens dying with hunger, found himself treated as a criminal amongst an allied nation. He esteemed every moment of delay which he experienced, as so many assassinations of the Frenchmen who were threatened with approaching famine. To put the finishing stroke to this inhospitable conduct, the consul of the Republick was solicited to arrest the captain, without giving the grounds of the suit instituted against him, as if it was desired to make the consul act the part of a constable. I send you the documents, which establish this fact. I know, sir, that you will answer me, that a superior court will determine upon the legality of these persecutions, and that justice will finally be done. But in an unjust prosecution, which they may have raised, I have already remarked to you, it is of little consequence to the English agents, how the suit shall be determined; if they have contravened an operation which was to save a French colony, they have attained the object they proposed; and if in the present case, for example, they should be obliged to pay heavy damages, heavier even than the value of the vessel, they will pay them with pleasure. If they shall

have prevented the supplies of one of our colonies, it must be to them as grateful, as it is grievous to us, to render those the instruments of the ruin of one of our possessions in the islands, who have guarantied their safe possession by their treaties with us.

However disagreeable it may be to me to fatigue the federal government with my complaints, I must again recur to the capture of the English brigantine *Perseverance*. I shall content myself with submitting the facts, and shall leave to you the reflections to which they may give rise.

The English brigantine *Perseverance*, captured by the privateer *le Sans Pareil*, commissioned at Cape Francois in the island of St. Domingo, arrived at New York* the 13th of last August. The English vice-consul immediately suggested, that the *Sans Pareil* had been commissioned at Charleston. The collector of the customs at once caused the prize to be seized, the captors to be expelled, possession to be taken, and all her papers to be carried away.

The French prize master wished to object to two English sailors, who, being improperly influenced, declared under oath, that this officer had killed a man at Charleston : and he was finally imprisoned.

Happily, the consul of the Republick at Boston, being informed of this strange persecution, sent his chancellor to Newport.

The chancellor found that, from just suspicions conceived against the two English sailors, and the impossibility of their giving security to appear at the criminal suit commenced against the prize master, they had been themselves committed to prison, that seeing themselves abandoned, uneasy about the consequences, perhaps repentant, they had confessed that their deposition was false, that finally they had retracted judicially, by confessing that they had been actuated only by malice, and had been set at liberty ; that in the mean time nobody was prosecuted but the two perjurers ; and that the final enlargement of the prize master was delayed.

The chancellor on his arrival requested from the collector a communication of the papers of the prize : he requested him to send her to Providence for the sake of greater

* Newport.

security; because an attempt had been made the night before, by the owner and the English sailors, to carry her off. He obtained neither, was obliged to protest, and went to Newport to claim justice from the governour.

The governour heard the cause on the 25th of August. The English vice-consul obtained its adjournment to a distant day, and appeared desirous of gaining time. Finally the prize was restored to the captors; but in the interval she became injured, the costs of suit consumed a part of her value, and the privateersmen became discouraged.

I spare you, sir, an infinity of daily complaints, all of which equally disclose an extreme facility in a great number of the civil officers of the United States, of condescension to the first requisitions of the English agents, and who thereby second, no doubt involuntarily, the intrigues of our perfidious enemies. It would be very pleasing to me no more to be obliged to trouble you with the recital of the injustice and malevolence of which those men are the victims, who, after having braved death, are compelled to submit to all the disgusts of the most cunning chicanery, before they can enjoy the price of their blood; those men, finally, who are afraid of losing, in fulfilling the office of the lawyer, about which they know but little, that time which they might have better employed in purging your coasts of the pirates who devour your commerce.

Pardon, sir, the length of this despatch: the importance of the matter which I have treated would not admit of more brevity. If any of the expressions which it contains should wound the Executive of the United States, it will be entirely against the wish of my heart; and I must pray you not to attribute them to any design of offending it, but to a sentiment of grief which I feel in writing it. You have been long persuaded of the profound esteem I profess for him who is its head, and whom I every day learn more to venerate.

Accept, sir, &c.

JH. FAUCHET.

No. 41.

Joseph Fauchet, Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 10th Vendemiaire, 3d year of the French Republick, one and indivisible (Oct. 1, 1794, O. S.)

SIR,—I send you the answer given by Mr. Lee, governor of Virginia, to the vice-consul of Norfolk, who claimed the execution of the 17th article of the treaty of commerce between France and the United States. I shall be obliged by your informing me what the instructions are, which this governor could have received from the President, or, at least, what is the issue of my complaints against the manifest violation of the article I have just cited. I beg leave to observe to you, that the brevity of the letter of Mr. Lee affords no satisfaction, and that if he delays any length of time in obtaining information, the justice I demand will be too tardy, and will afford the English frigates time to be supplied, and finally to brave the authority of your government.

Accept my esteem,

JH. FAUCHET.

P. S. You will remark, sir, that the letter of the vice-consul of Norfolk remained twelve days without an answer, and that when complaints are made against prizes taken by our cruisers, two hours are enough for even unjust seizures to take place.

No. 42.

Richmond, Sept. 12, 1794.

SIR,—I had the honour to find here your letter of the 31st of August, and with very great pleasure will make necessary inquiries, and then pursue the conduct which the President's instructions enjoin.

I have the honour to be, &c.

HENRY LEE.

A copy conformable to that which was sent to me by the vice-consul of the Republick at Norfolk.

JH. FAUCHET.

No. 43.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, Oct. 2, 1794.

SIR.—I have had the honour of receiving your letter of the 1st inst. in which you are pleased to repeat the complaint contained in your letter of the 18th ult. against the English frigate *Terpsichore*, *carrying* into Norfolk, in Virginia, as a prize, the French privateer *la Montagne*. You remonstrate also upon the delay which the governour of Virginia has shown, in granting the relief required by the consul of the French Republick; and desire to be informed of the instructions which have been given in this affair by the Executive of the United States, or at least of the issue of your application.

It was my intention to have replied to the case of the *Terpsichore*, in the answer which I purpose to make to your letter of the 18th ult. But I have no hesitation in delivering it to you, as my opinion, that her coming into our ports with a prize is inadmissible by our treaty with France. It is more. It is contrary to the rules, which have been long ago prescribed by the President of the United States to the governours of the individual states, and which governour Lee in his letter of the 12th ult. to consul Oster, undertakes to execute.

From the circumstances, however, of governour Lee being possessed of standing instructions and powers, adequate to the exigency, and of Mr. Oster having laid the matter before him, it could not be presumed that he had affected an unnecessary procrastination. Nor did you specify in your letter of the 18th ultimo, the interval between Mr. Oster's application and the retardment of governour Lee's answer. Hence, as it was known to me that it would require some time for a letter to pass from Norfolk to Richmond, the seat of government, for an answer to be returned from Richmond to Norfolk, and for the usual allowance for the possibility of the governour's absence, (which now seems probable from an expression in his letter of the 12th ult. to Mr. Oster) I did not hold myself justified in expressing to him a suspicion of neglect. Without such a suspicion it would have been absolutely useless to address him.

as he could have been merely instructed to make the necessary inquiries, and to fulfil the sense of the President; both which things he ought to accomplish of course, upon being notified of the occasion.

As governour Lee, in that letter of the 12th ultimo, promises to discharge the duties which are expected from him, I cannot doubt that he, or the lieutenant governour in his absence, has before this day completed the business, according to national faith.

But that there may not be any impediment to the gratification of your wishes, I have the pleasure of enclosing to you the copy of a letter, which will be despatched by the mail of to-morrow to the executive of Virginia.

I have the honour to be, &c.

EDM. RANDOLPH.

P. S. This letter was sent this morning. October 3.

No. 44.

The Secretary of State, to the Lieutenant Governour of Virginia. Philadelphia, October 3, 1794.

SIR,—It is with great mortification, that intelligence has been received at the department of state, from the minister of the French Republick, that the British frigate *Terpsichore* has *carried* as prize into Norfolk, or some of our ports in its neighbourhood, the French privateer *la Montagne*. Our treaty with France positively forbids the admission of a foreign ship of war under such circumstances. The rules which have been adopted by the President, are pointed on this particular subject; what is due to all nations, we ought faithfully to render to the British; what is beyond the rights of the law of nations, we are under no obligation to perform, especially towards the British shipping, which is hourly destroying our trade; and more especially in defiance of a treaty which ought to be held sacred.

It appears, sir, by a letter from governour Lee to the French consul at Norfolk, on the 12th of September last, that he had undertaken to make the necessary inquiries into the fact, and to do what the nature of the case demanded. The minister of the French Republick is uneasy at

the delay of the governour's answer, and is led to apprehend from thence, a more injurious delay in the effecting of the business. I have given him my ideas of the course of this affair; trusting and believing that the patriotism of the executive of Virginia will not suffer this gross insult to our treaty.

Let me entreat you, sir, to exert the attachment, which I know your whole body to possess, to national faith, and to cause to be rendered to the French Republick, that justice to which it is entitled, upon the presumption, that the facts as stated, shall be found to be accurate.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 45.

Joseph Fauchet, Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 15th Vendemiaire, 3d year of the French Republick, one and indivisible (6th October, 1794, O. S.)

SIR,—In proportion to the pain of complaining of the negligence and tardiness which are shown in many parts of the United States in the execution of the treaties which equally bind our two nations, is the pleasure of acknowledging the receipt of the despatch, in which I find expressed, with the energy of a friend, the intention of the federal government to maintain the engagements which it has contracted with the French Republick. I observe to you, however, that this intention will produce no effect, if you are obliged to notify it to the governours every time that hostile vessels with their prizes shall enter the ports from their cruise. For these vessels would then have time to take in provisions for themselves and their prizes before the order of departure (which ought to be given to them immediately for fulfilling the object of the contracting parties) can be notified to them. It does not require a long time to make the researches necessary for determining whether a vessel puts into a harbour only *by force of the dangers of the sea*. This is a case in which a few hours suffice for obtaining information; and it appears to me that there is already a fault on the part of the gover-

nours, or of those who are appointed to maintain the laws, that a demand must be made upon them for the execution of the instructions which they have received from their government. They have failed in their duty which prescribes a continual vigilance and attention to prevent any thing being done contrary to the laws or treaties of their country.

You will pardon, sir, these reflections when you shall learn, that an English frigate has just anchored in Hampton road with two French privateers, as prizes. If on the very day of her arrival she has not been directed to depart immediately; if there must have been long inquiries before hand, and the consul must have written in the first instance, the English will have had time to revictual, and supply all their wants; and the article of our treaty, which at first sight seems necessarily to be so disadvantageous to them, will in no respect control their piracies. To crown the system of robbery, which they have invented, nothing more will we wanting, than to carry into your own ports the vessels which they shall have taken from yourselves; since they already conduct thither, in spite of your laws, those which they have taken from your allies.

Accept, sir, my esteem,

JH. FAUCHET.

No. 46.

The Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, October 10, 1794.

SIR,—Believing that effect cannot be given to the intimation expressed in your letter of the 6th, more decisively than by an instruction to the governours, I have the honour of enclosing to you a copy of my circular letter to them: And of being, with great respect, &c.

EDM. RANDOLPH.

No. 47.

CIRCULAR.

From the Secretary of State, to the Governours of the several States. Philadelphia, October 10, 1794.

SIR,—Although I cannot doubt that the treaties of the United States with France will be respected by your excellency according to the obligations of good faith and sincere friendship; yet I must take the liberty of recommending to your particular attention the 17th article of the treaty of commerce. Mr. Fauchet, the minister of the French Republick near the United States, apprehends from circumstances which have been experienced, that unless prompt and decisive measures are adopted in the several ports in regard to vessels hostile to the French nation, and bringing in French prizes, this branch of that treaty will become null. It cannot require much time to go through the necessary examinations; and therefore I must entreat your excellency to enter into such arrangements for the execution of this member of the treaty, and the correspondent rules of the President of the United States, as will effectually prevent under those circumstances, hostile vessels from receiving comfort and succour contrary to solemn stipulations. It will not escape your observation, that if adequate measures should be delayed, in the ports distant from your excellency, until you can be notified and forward special instructions adapted to each case, the opportunity of enforcing the treaty will be lost. I have the honour to be, &c.

EDM. RANDOLPH.

No. 48.

The Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Philadelphia, October 19, 1794.

SIR,—I do myself the honour of transmitting to you the copy of a letter from the lieutenant governour of Virginia, in answer to mine of the 3d instant, upon the subject of the British frigate *Terpsichore*.

I have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 49.

*From Lieutenant Governour Wood, to the Secretary of State.
Richmond, October 10, 1794.*

SIR,—I have the honour to acknowledge the receipt of your letter of the third instant. I am not enabled at present to give you the information I could wish with respect to the British frigate the *Terpsichore*: Before the governour left this place, he received the information which you mention, from the vice-consul at Norfolk; and in his character of commander in chief of the militia, assured Mr. Oster, in a letter of the 12th ultimo, that “he will make the necessary inquiries, and then pursue the conduct which the President’s instructions enjoin.” My not receiving any communications respecting the governour’s inquiries, I naturally concluded the frigate had been ordered to depart, and had complied with the injunction. I have now given the most pointed instructions to the commander of the militia at Norfolk, to make immediate inquiry into the facts, and report the same to the Executive; and that he, in the mean time, cause to be rendered to the Republick of France that justice to which it is entitled. I have written to the vice consul on the subject, and have requested him to make me acquainted with all cases of a similar nature which may hereafter occur. I have the honour, &c.

JAMES WOOD.

No. 50.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick, near the United States, to Mr. Randolph. Philadelphia, the 12th Pluviose, 3d year of the French Republick, one and indivisible, (January 31, 1795.)

SIR,—It is now the third time that English vessels, notwithstanding my representations, have anchored with their prizes in the Chesapeake. I am assured that the French corvette *l’Esperance* has been conducted into Lynnhaven Bay, by the *Argonaut*. The fact is, that the latter vessel sailed from the Chesapeake in order to capture the corvette belonging to the Republick, returned after that expedition, and is even at this moment sheltered there.

You assured me, sir, that the most positive orders had been given, to prevent future violations of the treaties: notwithstanding that assurance the outrage is again renewed, and what is more, the English vessels which should remain in your ports, only to receive succour strictly necessary to enable them to gain the nearest national port, have remained stationary in them. At their return from a cruise on your coasts, where they capture your own vessels they procure their provisions, their supplies, in the United States: and may also, as has just happened, even when driven in by stress of weather, and when asylum is given to them, obstruct your and our commerce. In a word they appear to be ramparts established to cut off all communication, between your country and mine. This contravention of the contract which binds our two nations, can no longer be tolerated. I expect, sir, your answer, that I may communicate to the French Republick the motives for a conduct which will afflict it so much the more, as hers is all friendship, all justice, towards the United States. Accept my respect,

JH. FAUCHET.

No. 51.

From the Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Department of State, Feb. 1, 1795.

SIR,—Permit me to refer to the enclosed copy of my letter to the governour of Virginia for an answer to your favour of the 31st ultimo. Indeed, sir, if I could more strongly express to you the mortification which I have experienced from these events, I would do so: for I contemplate such a violation of our treaty with abhorrence.

I have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 52.

From the Secretary of State, to the Governour of Virginia. Department of State, February 1, 1795.

SIR,—It is with the greatest regret that I am constrained to transmit to your excellency, the enclosed copy of a

letter from the minister plenipotentiary of the French Republick. You will find, sir, that it contains most heavy complaints against the indulgence understood to have been shown in the ports of Virginia, to British vessels of war, which have made prize of French ships. The files of the council of state will support me in representing to the minister, that I had taken the liberty of urging the executive of Virginia on the 3d and 10th of October last, to wipe away a similar imputation on our national faith. Not having been enabled to communicate to him any result, in consequence of those letters, I have felt great embarrassment how to answer him on the present occasion. But, sir, confiding in the patriotism of the executive of Virginia, and being persuaded that it must be painful to them to tolerate the violation of our treaty with France, in so delicate a part, I shall assure him that the most speedy and effectual measures are recommended to your excellency.

Of those measures you are the best judge, being upon the spot, and within the reach of the most accurate information. But I cannot forbear to add, that as delay must be destructive of the object, it will probably be advisable for your excellency to send down some confidential officer, who may act with promptness and decision, without encountering the inconvenience of being obliged to send and receive expresses to and from Richmond.

I beg the favour of your excellency's immediate reply. And have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 53.

The Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Department of State, Feb. 24, 1795.

SIR,—I have the pleasure of transmitting to you copies of the despatches, which I received by the last mail, from the governour of Virginia, relative to the complaint which I some time ago forwarded to him from you.

I have the honour to be, sir, &c.

EDM. RANDOLPH.

No. 54.

The Governour of Virginia, to the Secretary of State. Richmond, Feb. 12, 1795.

SIR,—I am extremely concerned, that any seeming inattention to the treaty of the United States with France, should be attributed to the executive of Virginia: I however flatter myself that an investigation of that subject will totally exculpate them from having in any instance authorized an imputation on our national faith.

Although divested of effectual means to prevent in all our ports, the acts of the citizens or subjects of the belligerent nations which may contravene an article of the treaty, I trust the enclosed transcripts of the several and repeated letters and instructions on the subject, will satisfy the minister plenipotentiary of the French Republick, as well as yourself, that the executive have made every effort to render such instances as few as possible, and on every occasion to remedy them where they have occurred.

Of the act now particularly complained by Mr. Fauchet, your letter of the 1st instant, with its enclosure communicated to us the first information; nor will this be a matter of surprise, when the relative situation of Lynnhaven Bay is considered.

The information has now been submitted to the consideration of the council of state, and that no delay may prevent the application of such remedy as is attainable, and the circumstances of the case may on further investigation indicate, they have advised, that I shall become personally the agent in the business: in consequence of which I intend to set out to-morrow for Norfolk, and on my return, or as soon as the object of my journey is at all effected, you may expect a further communication respecting it.

In the mean time I must request you will be so obliging as to make Mr. Fauchet acquainted with the step determined on, as well as the contents of the enclosed, and assure him, that, independent of their sense of national dignity and the obligation arising from particular stipulations, the executive of Virginia will never want inclination to render to the French Republick every act of

friendship as well as justice, which is compatible with their political situation. I have the honour to be, &c.

RT. BROOKE.

No. 55.

CIRCULAR.

To the Commandants of Counties in which are Ports of Navigation. Richmond, June 8, 1793.

SIR,—The President of the United States having called on me, in my character of commander in chief of the militia of this state, to be ready to suppress any attempt or attempts which may be made within the limits thereof, to violate the neutrality he has declared in behalf of the people of the United States towards the belligerent powers, I consider it my duty to communicate the same to the commandants of the militia of those counties whose local situation may require it; together with the sentiments expressed by the President on this occasion.

He has declared that the treaty existing between the United States and France, and the treaty existing between the United States and Holland, do not authorize those powers to arm vessels within our ports; therefore any attempt on the part of the belligerent powers or their subjects so to do, will be a violation of the neutrality.

In all such cases you will therefore be pleased to interpose with your militia, seizing and detaining any vessel which you may find within the limits of your county, commissioned, equipped and manned as a privateer, on behalf of any of the belligerent powers, or of their subjects; and you will also interpose in all acts of hostility which may happen between the belligerent powers, detaining the party first aggressing.

In any event of this sort, you will be so good, without loss of time, to communicate the case to me with all the evidence legally taken in writing appertaining thereunto, that I may transmit the same to the President of the United States, whose decision, when known to me, will be forwarded to you. I have the honour to be, sir, &c.

HENRY LEE.

No. 56.

CIRCULAR.

To the Commandants of Counties, in which are ports of navigation. Richmond, August 22, 1793.

SIR,—It having been decided by the President of the United States, that no armed vessel, which has been or shall be originally fitted out, in any port of the United States, as a cruiser or privateer, by either of the parties at war, is to have asylum in any of the ports of the United States: in case any vessel within the foregoing description, should arrive in any port or harbour within the limits of your county, you are to cause her to be ordered to depart immediately, and in case of her refusal, you are to take effectual measures to oblige her to depart. Force is not to be resorted to, until every proper effort has been previously made to procure the early departure without it. If any such vessel or vessels shall have sent or brought, subsequent to the fifth instant, or should hereafter send or bring any prize or prizes into any port or harbour within your county, you will cause such prize or prizes to be immediately secured by your militia for the purpose of being restored to the former owners. The following are the names of the privateers comprehended within the meaning of this letter, that have hitherto come to the knowledge of the government of the United States:

Citizen Genet,	}	fitted out at Charleston, S. C.	
Sans Culotte,			
Vanqueur de Bastile,			
Petit Democrat,			
Carmagnole,	-	-	Philadelphia.
	-	-	Delaware.

You will be pleased to transmit in writing to the governor, all the cases with the evidences thereon, which may occur in pursuance of this communication.

I have the honour to be, &c.

JAMES WOOD.

No. 57.

From the Lieutenant Governour of Virginia to the vice consul of the French Republick at Norfolk. Richmond, Oct. 9, 1794.

SIR,—The communications made by you to the governour, respecting the British frigate the *Terpsichore*, he took up as commander in chief of the militia, before he left this place, and, I presume, instituted the inquiries which he promised to make, in his letter to you of the 12th ult. As the result of those inquiries were not communicated to me, I concluded the British frigate had been ordered to depart, and had done so. I have just now received a letter from the Secretary of State, on the subject of the *Terpsichore*, and have now given the most pointed instructions to the commandant of the Norfolk militia on the subject of it, and which I have requested him to communicate to you.

I entreat, sir, that you will be so obliging as to make me acquainted without loss of time of all cases of a similar nature, which may hereafter occur, and hope that you will be persuaded I shall always feel a particular gratification, on all occasions, to render to the French Republick that justice to which it is entitled.

I have the honour to be, &c.

JAMES WOOD.

No. 58.

From Lieutenant Governour of Virginia, to Thomas Newton, Esq. commandant of the militia of Norfolk. In council, 9th of October, 1794.

SIR,—I have received a letter from the Secretary of State, dated the 3d instant, stating that he had been informed by the minister of the French Republick, that the British frigate, the *Terpsichore*, had carried as prize into Norfolk, or some of our ports, the French privateer *la Montagne*. Our treaty with France positively forbids the admission of a foreign ship of war under such circumstances. The rules, which have been adopted by the President, are pointed on this particular subject. Those

rules have been communicated to you, by the governour's circular letter of the 5th of December last, to which I beg leave to refer. What is beyond the rights of the law of nations, we are under no obligation to perform, especially towards the British shipping, which is hourly destroying our trade; and more especially, in defiance of a treaty which ought to be held sacred.

I beg, sir, that you will, as commandant of the Norfolk militia, be pleased to inquire into this case, as well as all others of a similar nature, and report the same to the executive, with all possible despatch; and that you will, in the mean time, cause to be rendered to the French Republick, that justice to which it is entitled, upon the presumption, that the facts, as stated, shall be found to be accurate. This case was taken up by the governour, in his character of commander in chief of the militia, before he left this place, upon the representation of the vice consul of Norfolk. I find by the governour's letter to Mr. Oster of the 12th ult. that he assures him, "he will make the necessary inquiries, and then pursue the conduct which the President's instructions enjoin." Not having received any communications respecting the inquiries made by the governour, I naturally concluded the frigate had been ordered to depart, and had done so.

May I beg the favour of you to communicate the contents of this letter to Mr. Oster; and to Mr. William Lindsay, the collector of the port of Norfolk.

I have the honour to be, &c.

JAMES WOOD.

No. 59.

The Lieutenant Governour of Virginia, to the commandant of the militia of the borough of Norfolk, and of the counties of Norfolk and Elizabeth city. In council, 25th Oct. 1794.

SIR,—The minister of the Republick of France is apprehensive, from circumstances which have been experienced, that unless decisive measures are adopted with respect to vessels hostile to the French nation, bringing into our ports French prizes, the 17th article of the treaty of commerce will become null.

I beg, sir, to call your particular attention to that branch of the treaty, as well as to the correspondent rules of the President of the United States, communicated to you in the governour's letter of the 5th of December last; trusting that you will pursue measures, which will effectually prevent, under those circumstances, hostile vessels from receiving comfort or succour, contrary to solemn stipulations. I have the honour to be, &c.

JAMES WOOD.

No. 60.

From Lieut. Colonel Willis Wilson, to the Governour of Virginia. Portsmouth, January 3, 1795.

SIR,—I beg leave to enclose your excellency a copy of a note from the British consul, to the collector of the customs of this port: The collector it seems, thought himself unwarranted to do any thing in the business. I was applied to by an officer of the customs, respecting the consul's request, or demand,—and conceived it my duty to give orders to the commandant of the forts, not to suffer the frigates to pass until your excellency's orders were had thereon—It is also my duty for the sake of tranquillity, peace and order, to make known, that the commanders of his Britannick majesty's ships have rendered themselves very obnoxious to the citizens of these two towns, as well as others, by lawless depredations on their property and tyrannical impressments of native seamen—that there now lie at our wharves, three French ships of war, with crews to amount of six or seven hundred men, the British ships in question, if allowed to come up, must also lay at the wharves, to go through their repairs; consequently the necessary subordination cannot be had, by the officers of either party, over their seamen; I am therefore very apprehensive, in such a case, of dangerous consequences. In short, I think it very imprudent in the British to throw themselves in a port where there will be so great a majority of people with whom they are at war: for it is not in the power of all neutral ports to keep order, or protect their neutrality—I am sure it is not the case with this. If therefore they are entitled to repairs in our ports, I humbly conceive Yorktown, or any other port where there

may not be so large a concourse of French citizens, a much more eligible place for them.

I will be very thankful to your excellency for advice, whether the brigadiers have an existing command over the respective counties, or whether that command is vested in the lieutenant colonels and the brigadier generals confined to the brigades?

I have the honour to be, &c.

WILLIS WILSON, Lt. Col.

No. 61.

Mr. Hamilton, British Consul at Norfolk, to Mr. Lindsay, Collector of the Customs. British Consul's office. Norfolk, January 2, 1795.

SIR,—His majesty's ships Thetis and Cleopatra having received some damage, it will be necessary for them to have repairs, before they can again proceed to sea—I have to inform you, that both ships are expected here the first fair wind for that purpose, and I presume they will be permitted to pass the forts into this harbour.

I am with respect, sir, &c.

JOHN HAMILTON.

No. 62.

From the Lieutenant Governour of Virginia, to Lieutenant Colonel Willis Wilson, commandant of the militia of Norfolk county. In Council, 7th January, 1795.

SIR,—The letter which you addressed to the governour the 3d instant, has been received by me, and submitted to the consideration of the council of state. The board conceived, that ships of war circumstanced as those mentioned by the British consul, may be permitted to enter our ports and to make the necessary repairs to fit them for sea; provided they have not made prizes of the subjects, people, or property of France, and coming with their prizes into the ports of the United States. If any circumstances should occur, which may be subversive of the tranquillity of the place, the law gives you ample powers to call forth the militia for the suppression of it.

I have the honour to be, &c.

JAMES WOOD.

No. 63.

CIRCULAR.

The Secretary of State to the Governours of the several States. Department of State, April 16, 1795.

SIR,—As it is contrary to the law of nations, that any of the belligerent powers should commit hostility on the waters, which are subject to the exclusive jurisdiction of the United States ; so ought not the ships of war, belonging to any belligerent power, to take a station in those waters, in order to carry on hostile expeditions from thence. I do myself the honour, therefore, of requesting of your excellency, in the name of the President of the United States, that as often as a fleet, squadron, or ship of any belligerent nation shall clearly and unequivocally use the rivers or other waters of *as a station in order to carry on hostile expeditions from thence*, you will cause to be notified to the commander thereof, that the President deems such conduct to be contrary to the rights of our neutrality ; and that a demand of retribution will be urged upon their government, for prizes, which may be made in consequence thereof. A standing order to this effect may probably be advantageously placed in the hands of some confidential officer of the militia ; and I must entreat you to instruct him to write by the mail to this department immediately upon the happening of any case of the kind.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 64.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 13th Floreal, 3d year of the French Republick, one and indivisible, (2d May, 1795, O. S.)

SIR,—On the 24th of February last, I received the copy of the despatch which the governour of Virginia transmit-

ted to you. Doubtless your object as well as his was to prove the exertions made use of to satisfy the reclamations which I have raised against the violation of our treaties, three times repeated in the Chesapeake. I was not a little astonished to see among the documents you sent me as a proof of those exertions, the proscription pronounced in 1793 against French vessels armed in the ports of the United States. I do not require this order of the government to be persuaded of the promptitude with which justice is done to the complaints of English agents.

Since my arrival here, a single allegation from them, whether founded or not, has been sufficient for causing the prizes of our privateers to be arrested, which our treaties sheltered from every kind of prosecution; and far from using the same coercive means towards the English, when they sent prizes made upon us into your ports, even the severity which your treaties with us impose, has not been exercised towards them. In a word, the militia have as yet been assembled only to support the detention of French vessels or of their prizes. So that on a single suspicion, the requisitions of the English have been obeyed, and we with positive facts have not been able to obtain justice. I waited the effect of the promises made to you by Mr. Brooke in his letter of the 12th of February last. After an anxiety of two months, far from receiving the satisfaction which I had a right to expect, I am informed that a French privateer and two of her prizes have just been carried into Hampton. I hesitated, sir, to testify to you my indignation against this new audacity on the part of the English, at the very moment when their government is boasting of having become the friend of your country: and that hesitation arose from the little success produced by my reiterated complaints: I once more recall them to you here, sir, and may this be the last time that I shall fulfil that painful duty.

I claimed the execution of our treaties violated by the putting into Norfolk of ships which captured American and French vessels laden with provisions and bound to France, under convoy of the Concord; far from acceding to my demand, you took the trouble to interpret the treaty in favour of our enemies, and that favourable interpretation could not defend a single vessel of the capturing division, since even in your construction it had contravened the

17th article of your treaty with France, by taking into Hampton the privateer *la Montagne*, &c. &c. Governour Lee did not till after some time answer the claim of the consul of the Republick in Virginia, and contented himself with making some vague promises, of which you yourself, sir, have never yet discovered the effect: Mr. Lee doubtless supposed that his promise alone should content and satisfy the just claims of the agents of the French Republick, since he has not thought proper to inform his own government of the measures he was to take for accomplishing his promise given to fulfil the instructions of the President.

Soon after I had a new opportunity of reiterating to the Executive of the United States my hitherto fruitless complaints against the violation of our treaties, an English vessel which had put into Hampton, quit that port, on the information of a pilot, in order to go and capture *L'Esperance*, a corvette of the Republick, and an American vessel which appeared in the opening of the bay; she again entered the bay with the corvette, re-armed her there, and sent her out on a cruise. I protested against this audacious infraction, and was still answered by promises; and these promises are not yet fulfilled: The *Argonaut* is also permitted with impunity to defy your magistrates, who doubtless required her to go out, that being their duty. Further, the *Thetis* on returning from her piracies against your own vessels, is permitted to repair completely in your ports the considerable damages which she received in the ardour of her pursuit, whilst the 17th article of our treaty is formally opposed to it, as well as to the asylum which you allowed in general to admiral Murray's division: for in a word, sir, all the vessels composing this division have taken French and American vessels under the single pretext that they were laden with French property. Whether the allegation as to the latter be true or false, the captors should be driven from your ports. If they have robbed you, one does not receive brigands in the house they have pillaged. If they have seized our property, our treaty is pointed in that respect.

After so many useless efforts, sir, you must be sensible of the pain I experience in tracing to you a picture so different from that offered by the French Republick whenever justice towards you is in question, even though her

interests are compromitted. It was when a terrible war was incessantly devouring her, that she rigorously fulfilled her treaties with you; in this instance she demands but justice, and cannot obtain it. On the contrary, she sees her enemies admitted to an intimacy with you, at the moment in which your commerce and your sovereignty are alike insulted by them; at the moment when adding derision to injustice, they despoil you anew upon the seas; when they promise to indemnify you for former acts. This reflection, sir, becomes much more grievous, when we see posted up under your eyes, the official legalization of a proclamation, which prohibits your commerce with our colonies, and suspends to you alone the law of nations. I know, sir, what respect imposes on me as to what immediately interests your affairs and your relations as a people. But I cannot entirely pass in silence transactions to which the Republic is no stranger, because they are directed against her; and that to subscribe by an excess of courtesy to such orders, were to quit the neutral position which the Americans profess. Examine, I pray you, sir, whether this neutrality can be said to exist, when, on the one hand you can no longer maintain your treaties, and on the other you are obliged to abandon your relations exclusively to the discretion of England, who doubtless will soon declare all the universe blockaded, except her possessions. What account do you conceive I can render to the French government, of the means you take for rendering your neutrality respectable? Yet on that my instructions insist, and it is on that more especially that France is uneasy. I shall not remind you of the conversations which I have had the honour of having with you on this subject; still less should I call to your recollection the verbal promises which you have repeatedly made, especially at a certain period, of a more honourable state of things. You know what on the faith of the government we are to expect from a negotiation which creates much noise. All America now knows the result of this measure. The same acts which produced it, still exist since it has taken a form which at first was not announced, but from which, moreover, more had been expected.

I hasten, sir, to quit a subject which I begun but with pain, and with respect to which I know my obligations. I return to what occupies me more immediately.

I hope therefore, sir, that the Executive of the United States will not be satisfied under its treaty concluded with England, since every thing proves that that mean is insufficient. I likewise hope that your ports will henceforward be shut against vessels which enter them in contravention of the treaties uniting our two nations. I also hope, that the President, who has so often promised me through you that he would support the treaties at all events, will give orders that his intentions, upon which I have not the shadow of a doubt, be finally fulfilled; in a word, I hope that my claims, so often and so many times repeated, will be attended to, so much the more as they are just, and as for several months I have not ceased to present them to the cold impartiality of your government.

Accept, sir, &c.

JH. FAUCHET.

No. 65.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republic near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 4th Prairial, 3d year of the French Republic, one and indivisible (May 23, 1795, O. S.)

SIR,—It is now twenty-one days since I had the honour of writing to you, and eight since you promised an answer to my letter. It gives me pain to be obliged to remind you of this promise. An event announced in the gazettes proves how much the complaints I have made required an immediate attention. If against the tenour of the treaties which I have hitherto invoked in vain, an English fleet employed upwards of ten months at the entrance of your ports, intercepting French property, real or supposed, and even frequently conducting prizes into your bays, had not received a constant asylum in the United States, with the liberty of supplying themselves with provisions and of repairing their vessels, they could not have again taken French vessels in the Chesapeake.

I experience unpleasant sensations, sir, when I observe that such accidents are repeated on your coasts only as the sequel to the violation of our treaties, notwithstanding

my reiterated representations ; and notwithstanding the religious punctuality with which the French Republick keeps her engagements with a nation to whom she has not ceased to testify her attachment. Accept, sir, my esteem,
JH. FAUCHET.

No. 66.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Department of State, May 29, 1795.

SIR,—As soon as I had submitted to the President of the United States, your letter of the 2d instant with which I was honoured on the 4th, he instructed me to search the files of my office, in order that he might do, on this occasion, what he has done on every other of a similar nature. This has been to weigh the complaints of foreign ministers, with temper and impartiality ; to explain misconceptions with frankness, to rectify real errors ; to compensate where compensation was due, but to stand firm to the imperious dictates of national honour.

I have obeyed his command, with an anxiety to convince the French Republick, that we have kept pace with our obligations, but with a resolution to rest my reply upon facts, simple and unrestrained, and upon reasoning, seeking no lustre from a fervency of style. This, sir, is the result.

First, The order of 1793, prohibiting “ The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties, for military service, offensive or defensive,” was transmitted to you, as a part of the suite of papers, intended by the governour of Virginia for your information of his conduct. Nothing was more remote from my imagination, than that this order could awaken the discontent which generated the early discussions with your predecessor. It was announced to Mr. Genet in May of that year ; and its principle has never been since assailed as far as I recollect, under the authority of your government, except from his pen ; notwithstanding Mr. Jefferson’s letter to our minister in Paris on the 16th of August, 1793, which was communicated to the French executive, assigns to this subject a prominent rank for consideration. Permit me therefore, to refer you to a

letter from this department to Mr. Genet on the 5th of June, 1793 ; wherein you will find the decided sense of the President to be, that " The arming and equipping of vessels in the ports of the United States to cruise against nations, with whom they are at peace is incompatible with the territorial sovereignty of the United States ; that it makes them instrumental to the annoyance of those nations ; and thereby tends to compromit their peace." Permit me also to refer you to an act of Congress on the 5th of June, 1794, rendering it penal within the waters of the United States to fit out and arm, or procure to be fitted out and armed, or knowingly to be concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens or properties of another foreign prince or state, with whom the United States are at peace. Both of those letters express the grounds of this provision.

To open afresh the disagreeable scenes of that day, is a task which we did not expect ; after the disapprobation manifested by your Republick, towards the chief actor ; and more especially after the *forbearance* of the President, who, having no personal impulse to indulge, discovered, as is known, sir, to you, no desire to embrace the opportunity, presented by your *first* official application. But without for a moment admitting, as you seem to apprehend, that the order ought to become exceptionable to one nation, because by its operation "*right*" is done to another ; we still hold it to be reconcileable with unsullied faith and essential to an honest neutrality.

If *French* armaments in our ports have principally experienced the penalties of the order ; if the execution of it has been prompt ; it is because in the one instance, an expeditious remedy was practicable ; and in the other scarcely any but *French* cruisers were attempted to be there equipped ; although examples are not wanting of British cruisers being in like manner disarmed. Every contrast, therefore, is unfounded, between our presumed rapidity of motion against France, and a reluctant tardiness towards other powers.

Second, But, sir, you have drawn a conclusion, inadmissible by us, under any aspect. You have ventured to intimate a *predilection* in our government for Great Britain ;

and to fortify the insinuation by these suggestions : 1. that " ever since you have been here, a single allegation on the part of the English agents founded or not, has been sufficient to cause to be arrested, the prizes made by your privateers, although our treaties should shelter them from every pursuit : " 2. that " far from using the same means of coercion towards the English, when they send into our ports the prizes made from the French ; the rigour, which our treaties demand, has not been exercised : " 3d. that " the militia have as yet been assembled only to support the arrest of French vessels, or of their prizes : " 4th. that " under our very eyes is fixed the official legalization of a proclamation, which interdicts to us a commerce with your colonies, and suspends as to us alone the law of nations : " 5th. and " that the United States quit the neutrality which they profess by subscribing through an excess of circumspection (menagement) to a mandate like this ; and by being unable, on the one side to maintain their treaties, and by being obliged, on the other, to abandon their relations, exclusively to the discretion of England. " You, lastly, allude to our treaty with Great Britain, as if it rivetted the suspicions, so profusely strewed in every page of your letter.

First, If the names of the French prizes, which have been arrested by virtue of instructions from our government ; the time and place of the arrest, and the issue of the examination, were now within my reach ; each of them should be brought to the test. But, not being individually remembered, they shall be classed under three heads : 1st, Those made by illegal privateers : 2d, Those made by lawful cruisers, but within the protecting line of our coast : and 3d, Those, made by lawful cruisers on the high seas.

First, The seizure of prizes made by illegal privateers, was the effect of necessity ; having been postponed, until the injunctions against those corsairs had been often and flagrantly contemned. No precaution was spared to prevent an unjust detention. The Executive of the United States ; the governours ; or some officer acting under the one or the other, passed their judgment upon the probability and adequacy of the cause of arrest, in the first stage of the business, and the final decision was always dispassionate, and deliberate : what better security, situated as our country is, could have been devised, to avoid

oppression on one hand, and to discharge our neutral functions on the other?

Although little would be hazarded by asserting, that few, if any, of those seizures were exempt from the animadversion of the Executive rules in 1793; and it would be a laborious undertaking to discuss them in all their minutiae; yet will not that undertaking be declined whensoever it shall be desired and a list shall be produced. We are aware of the usual remark, that the enthusiasm of privateers may be damped by interruptions in their career: and can affirm with truth, that it was *duty*, not the prospect of this *consequence*, which governed the conduct of the Executive. If foreigners or our own citizens, will endanger our neutrality by the illicit arming of vessels in our territory, the practice must be suppressed to the utmost of our ability. In acquitting ourselves of this high duty, we are solicitous to obviate every collateral injury to others. But the consequence is imputable to the wrong doers only; and he who is disposed to engage in naval warfare, may protect the fruits of his enterprise, by being previously sure, that the vessel, on which he embarks, is not disqualified for reception and countenance in a neutral port. In vain would neutral nations represent to the warring powers, that commerce was discouraged by the scrutiny or boarding of merchant ships on the ocean. It would be replied, that such a discouragement is distant from their wishes; but that the greater consideration of distressing the trade of their enemy, overwhelms the consequential embarrassment to that of others.

Second, Small is the number of captures within the jurisdiction of the United States. The *Grange* which was restored for this cause to her former British owners, has long ceased to be a topick of controversy; and if any other example of restitution shall be adduced, I pledge myself to prove its propriety. The *William of Glasgow* was indeed after much research, determined to be wrongfully arrested. But the evidence against her was violently presumptive, and it was difficult to fix the preponderance of either scale. By imposing on the claimant, according to strict law, the burden of maintaining his own pretensions, and by repudiating testimony, which was exceptionable, not from a defect of character in the witness, but from a critical application of judicial maxims, the captors regain-

ted their prize—nor did we stop here. The damages incurred by the *William*, are ready to be paid when the amount shall be liquidated.

Third, As to prizes, made by legal cruisers on the high seas, it never was the intention of the President to interpose, he having abstained (as the 17th article of our treaty of commerce imports) from examining into their lawfulness. If to his instructions may be ascribed any vexation of genuine prizes; they may perhaps have been mistaken, for prizes of the two foregoing obnoxious kinds. But even for these mistakes, we ought not to be questioned, until they shall have been notified to us, and satisfaction has been refused.

That the admiralty tribunals may have awarded process for bringing prizes before them, is not denied. But the cases have been stated to be generally of this description. The captured property has been supposed to belong to our own citizens or neutral nations. The proprietors could not be silent spectators of their ruin; but addressed our courts. The captors were summoned; and insisted that by the treaty of commerce, what they should call a prize, was exalted beyond the judicial sphere. Some judges yielded to this argument: others repelled it. But it has been since maturely settled by the supreme court of the United States, that relief ought to be administered, where it is bona fide prayed. If it were otherwise, the substance of our citizens would be the sport and plunder of every sea rover who carried a French commission in his pocket. The treaty shields prizes *from an enemy*; not rapine from our own citizens or from other neutral people. Farther than to rescue captures of this denomination, it is not contended, that our courts are competent.

There was indeed once room to fear, that claimants sometimes embraced the double chance of executive and judicial redress. But the promptitude, with which this manœuvre was counteracted is evinced by my letter to you and to the governours on the 22d of October, 1794.

Second, Your next imputation is, that “far from using the same means of coercion towards the English, when *they* send into our ports prizes made from the French, the rigour, which our treaties demand, has not been exercised.” For the elucidation of this charge, let us resort to your own citations. They consist, 1st, in the British vessels, which

had captured American and French bottoms, laden with provision for France under the convoy of the *Concorde*; and in the squadron of admiral Murray, putting into the the harbour of Norfolk, and enjoying an asylum therein:—2d, in the British frigate *Terpsichore*, coming into Hampton with the French privateer *La Montagne*:—3d, in another British ship, the *Argonaut*, having anchored at Hampton, quitting that port upon the advice of a pilot to go, and attack *L'Esperance*, a corvette of the French Republick, and an American vessel, both of which were discovered at the opening of the bay; returning with the corvette into the Chesapeake; re-arming her; sending her out to cruise; and being permitted to defy our magistracy: and 4th, in suffering the British frigate *Thetis*, on her return from her piracies on our own vessels, to repair completely in our ports the heavy damage, which she had sustained in the ardour of pursuit.

First, unless our treaty with France opposes the granting of access to the publick armed vessels of the nations with whom we are at peace; custom has established, that they may enter our ports impelled by necessity, or induced by comfort or convenience. This was announced by the Executive on the 9th of September, 1793.

Notwithstanding that treaty, it has not been yet disputed, that the same allowance may be extended to the enemies of France, provided they have not captured French property or people. But on the 3d of August, 1793, the President declared his construction of that treaty to be, that no publick armed vessels were thereby forbidden from our waters, except those which should have made prize of the people or property of France, *coming with their prizes*, although, when you allude to my letter of the 7th of September, 1794, which was occasioned by yours of the 21st of August, 1794, and drew forth a reply on the 18th of September, 1794. You insinuate that “pains have been taken by me to interpret the treaty in favour of your enemies,” yet, was it an interpretation advised by all the heads of departments, and the attorney general, with whom the President was in the habit of consulting. You differ from us in the construction. What is to follow? Nothing I trust and believe between our two governments, which is not customary and cordial between friends. “In a case like the present, where the

missionary of one government construes differently from that to which he is sent, the treaties, which are to form a common rule of action for both, it would be unjust in either to claim an exclusive right of construction. Each nation has an equal right to expound the meaning of their common rules, and reason and usage have established in such cases, a convenient and well-understood train of proceeding. It is the right and duty of the foreign missionary to urge his own constructions; to support them with reasons, which may convince, and in terms of decency and respect, which may reconcile the government of the country to a concurrence. It is the duty of that government to listen to his reasonings with attention and candour, and to yield to them when just. But if it shall still appear to them that reason and right are on their side, it follows of necessity, that exercising the sovereign powers of the country, they have a right to proceed on their own constructions and conclusions, as to whatever is to be done within their limits. The minister then refers the case to his own government; asks new instructions, and in the mean time acquiesces in the authority of the country. His government examines his constructions; abandons them, if wrong; insists on them if right; and the case then becomes a matter of negotiation between the two nations." This quotation is from the letter, which conveyed to the French Republick the sensations of our government towards Mr. Genet. To its terms we shall be always willing to conform, and if, contrary to our present impressions, the treaty with France, which we deem sacred, shall appear to your Republick to require the expulsion of every British ship of war, which may have taken a French prize in any part of the world, let us be convinced; we will renounce the ancient opinion; and fulfil, whatsoever else may be right.

Thus thinking, we could not banish that part of admiral Murray's squadron, which had *not come in with French prizes*. But if they have used the waters of the United States as a *station*, from whence to carry on hostile expeditions, they will fall within the animadversions of the President's order on the 16th ultimo; and when the facts shall be ascertained, he will not be backward in supporting his declarations.

Second, The British frigate *Terpsichore*, is considered by you, as offending our own interpretation of the treaty, and being nevertheless tolerated in our ports. We will, therefore, trace the transactions concerning her to their origin.

On the 18th of September, 1794, you represented to me in a letter received on the 20th, that "she had cast anchor at Norfolk with the French privateer *La Montagne*, which she had taken: that the consul of the French Republic had written to the governour of Virginia to complain of this infraction, and a long time had elapsed without the governour condescending to return an answer." On the 1st of October you sent to me the answer of the governour dated on the 12th of September to the letter of the French consul: saying that "he would with very great pleasure make the necessary inquiries and then pursue the conduct which the President's instructions enjoin." At the same time you request to know the instructions of the President to the governour, or at least the issue of your reclamations against what you denominate manifest violations of the 17th article of the treaty. It being always better to rely on writings of the moment, as expositors of the sentiments then prevailing, I hope to be excused for transcribing here portions of my answer to you on the 2d of October, and my letter on the next day to the governour of Virginia. "It was my intention to have replied to the case of the *Terpsichore* in the answer which I purpose to make to your letter of the 18th ultimo. But I have no hesitation in delivering it to you, as my opinion, that her coming into our ports with a prize, is inadmissible by our treaty with France. It is more. It is contrary to the rules, which have been long ago prescribed by the President of the United States, to the governours of the individual states, and which governour Lee in his letter of the 12th ultimo to consul Oster, undertakes to execute."

"From the circumstances, however, of governour Lee being possessed of standing instructions and powers, adequate to the exigency, and of Mr. Oster having laid the matter before him: it could not be presumed, that he had affected an unnecessary procrastination. Nor did you specify in your letter of the 18th ult. the interval between Mr. Oster's application and the retardment of governour Lee's answer. Hence as it was known to me, that it

would require some time for a letter to pass from Norfolk to Richmond, the seat of government, for an answer to be returned from Richmond to Norfolk, and for the usual allowance for the possibility of the governour's absence (which now seems probable from an expression in his letter of the 12th ult. to Mr. Oster) I did not hold myself justified in expressing to him a suspicion of neglect. Without such a suspicion, it would have been absolutely useless to address him, as he could have been merely instructed to make the necessary inquiries, and to fulfil the sense of the President, both which things he ought to accomplish of course, upon being notified of the occasion.

“As governour Lee in that letter of the 12th ult. promises to discharge the duties which are expected from him, I cannot doubt, that he, or the lieutenant governour in his absence has before this day completed the business, according to national faith. But that there may not be any impediment to the gratification of your wishes, I have the pleasure of enclosing to you the copy of a letter, which will be despatched by the mail of to-morrow to the executive of Virginia.”

That letter runs thus, “October 3d, 1794. It is with great mortification, that intelligence has been received at the Department of State from the minister of the French Republick, that the British frigate *Terpsichore* has *carried* as a prize into Norfolk or some of our ports in its neighbourhood, the French privateer *La Montagne*. Our treaty with France positively forbids the admission of a foreign ship of war under such circumstances. The rules which have been adopted by the President, are pointed on this particular subject. What is due to *all* nations, we ought faithfully to render to the British. What is beyond the rights of the law of nations, we are under no obligation to perform, especially towards the British shipping which is hourly destroying our trade and more especially in defiance of a treaty which ought to be held sacred.”

“It appears, sir, by a letter from governour Lee, to the French consul at Norfolk, on the 12th of September last, that he had undertaken to make the necessary inquiries into the fact, and to do, what the nature of the case demanded. The minister of the French Republick is uneasy at the delay of the governour's answer, and is led to apprehend from thence a more injurious delay in the

effecting of the business. I have given him my ideas of the course of this affair; trusting and believing that the patriotism of the executive of Virginia will not suffer this gross insult to our treaty. Let me entreat you, sir, to exert the attachment, which I know your whole body to possess, to national faith, and to cause to be rendered to the French Republick that justice, to which it is entitled, upon the presumption that the facts as stated, shall be found to be accurate."

Upon these letters you are pleased on the 6th of October, 1794, to make the following comments. "In proportion to the pain of complaining of the negligence and tardiness which are shown in many parts of the United States in the execution of the treaties, which equally bind our two nations, is the pleasure of acknowledging the receipt of the despatch, in which I find expressed with the energy of a friend, the intention of the federal government, to maintain the engagements, which it has contracted with the French Republick. I observe to you, however, that this intention will produce no effect, if you are obliged to notify it to the governours every time that hostile vessels *with their prizes* shall enter the ports from their cruise (arrondissement.) For these vessels would then have time to take in provisions for themselves and their prizes before the order of departure, which ought to be given to them immediately, for fulfilling the object of the contracting parties, can be notified to them. It does not require a long time to make the researches, necessary for determining, whether a vessel puts into a harbour only by force of the dangers of the sea. This is a case in which a few hours suffice for obtaining information, and it appears to me, that there is already a fault on the part of the governours or of those who are appointed to maintain the laws, that a demand must be made upon them for the execution of the instructions, which they have received from their government. They have failed in their duty which prescribes a continual vigilance and attention, to prevent any thing being done, contrary to the laws or treaties of their country. You will pardon, sir, these reflections, when you shall learn that an English frigate has just anchored in Hampton road with two French privateers, as prizes. If on the very day of her arrival she has not been directed to depart immediately: if there must have been

long inquiries beforehand : and the consul must have written in the first instance ; the English will have had time to revictual, and supply all their wants : and the article of our treaty, which at first sight seems necessarily to be so disadvantageous to them, will in no respect control their piracies. To crown the system of robbery which they have invented, nothing more will be wanting, than to carry into your own ports, the vessels, which they shall have taken from yourselves ; since they already conduct thither in spite of your laws, those which they have taken from your allies."

That your suggestion was not forgotten, is demonstrated by my circular letter to the governours on the 10th of October, 1794, a copy of which I had the honour of enclosing to you on the same day in these words : "Although I cannot doubt, that the treaties of the United States with France will be respected by your excellency according to the obligations of good faith and sincere friendship, yet I must take the liberty of recommending to your particular attention the 17th article of the treaty of commerce. Mr. Fauchet, the minister of the French Republick near the United States, apprehends from circumstances which have been experienced, that unless prompt and decisive measures are adopted in the several ports, in regard to vessels hostile to the French nation, and bringing in French prizes ; this branch of that treaty will become null. It cannot require much time to go through the necessary examination ; and therefore, I must entreat your excellency to enter into such arrangements for the execution of this member of the treaty, and the correspondent rules of the President of the United States, as will effectually prevent under those circumstances hostile vessels from receiving comfort and succour, contrary to solemn stipulations. It will not escape your observation, that if adequate measures should be delayed, in the ports distant from your excellency until you can be notified and forward special instructions, adapted to each case, the opportunity of enforcing the treaty will be lost."

On the 10th of October the lieutenant governour of Virginia acknowledges the receipt of mine of the 3d, and proceeds :—" That he was not able at present to give me the information he could wish, with respect to the British frigate *Terpsichore* : that before the governour left Rich-

mond, he received the information, which I mentioned from the vice consul at Norfolk, and, in his character of commander in chief of the militia, assured Mr. Oster in a letter of the 12th ultimo, that he 'would make the necessary inquiries, and then pursue the conduct which the President's instructions enjoined:' that not receiving any communications respecting the governor's inquiries, he naturally concluded that the frigate had been ordered to depart, and had complied with the injunction: that he had now given the most pointed instructions to the commandant of the militia at Norfolk to make immediate inquiry into the facts, and report the same to the Executive; and in the mean time to cause to be rendered to the Republick of France, that justice to which it was entitled: that he had written to the vice consul on the subject, and had requested him to make the lieutenant governor acquainted with all cases of a similar nature which might thereafter occur." A copy of this letter I had the honour of transmitting to you on the 19th of October, 1794.

The lieutenant governor had given on the 9th of October, 1794, positive instructions to the purport promised, as is manifest from his letter of that date to Thomas Newton, commandant of the militia of Norfolk; and on the 25th of the same month, he directed the commandants of the militia of the borough of Norfolk and the counties of Norfolk and Elizabeth-city, effectually to execute my letter of the 10th of October, 1794, by preventing vessels in the predicament described from receiving comfort or succour.

What became of the *Terpsichore*, you will ask? Lieutenant governor Wood, truly conjectured, that she had departed. For she sailed *certainly* before the 28th of September, 1794, and very *probably* about the 20th, and it is not understood that she has returned.

Where, I beseech you, in this assemblage of facts, will you find a vestige of British prepossession? Is it in the interpretation which we have given to the 17th article of the treaty? We are still persuaded of its soundness. Until we be convinced of an error; bound as we are by the law of nations, to sit as an independent umpire between the pretensions of the belligerent parties, relative to ourselves, we are bound by conscience to obey our own understanding. Is it in the federal Executive, not having

employed the most effectual means in his power? He was assisted by the governours, the district attorneys, the collectors of the customs; and he appointed the militia for important exigencies. Is it because our nation, as yet far below the zenith of its future force, cannot summon into action a navy, wherewith to repel intrusions? This would be extravagance.—Is it because we do not learn *in an instant* that we have been injured by the coming of prizes, made from the French? Intelligence cannot travel so quickly. Judge for yourself, sir, of the sensibility, which influenced this passage of a letter to the minister plenipotentiary of his Britannick majesty. “It will not be deemed by the President a sufficient expiation for British ships of war, which have made prizes of French vessels, and come into our ports in derogation of our treaty with France, merely to depart when individually directed; but such conduct will be considered as entitling the United States to adopt any proceedings, which the repetition of the aggression shall demand.” To the inquiry of Mr. Hammond as to the “*proceedings*” contemplated, it was answered that “being free to choose the means for executing the branch of the treaty in question, we shall adopt those, which are expedient and commensurate with the violations of it; and the nature and degree of them will depend upon the nature and degree of each exigency.” When, therefore, we shall have wilfully failed in these purposes, your remonstrances will not be misplaced.

Third, I am not yet in the capacity of pronouncing whether the capture of the French corvette *l'Esperance*, by the British ship *Argonaut*, ought to form an article in any remonstrance whatsoever.

Your letter of the 31st of Jan. 1795, was the earliest notice of the event to the President of the United States. Mine of the 1st of February, transmitting yours, was the earliest notice to the executive of Virginia. This being a principal object of the governour's visit to Norfolk; he sought information from a source of accuracy as he conceived, when he resorted to the vice consul of the French Republick, residing there. But, says the governour on the 1st of April, 1795, “With respect to the capture of the corvette, I received no information from him which appeared to justify the uneasiness, occasioned by that

event; *he charging no circumstance as improper in the captors*; but rather seemed to consider the introduction of the prisoners, made on that occasion, so soon into the place where the exchange would be effected, as an alleviation of the misfortune of losing the vessel which he attributed to some misinformation received by the captain from two American vessels, with the names of which or of their masters he was unacquainted."

Here, without censure might the governour have abandoned his investigation; but being no lukewarm pursuer of truth, he proceeded further. "Being informed that a pilot from Norfolk, (a man of respectable character,) was well acquainted with the circumstances of the capture, and his absence preventing the governour from then availing himself of his information, he directed his deposition to be taken as well as that of the captain who had commanded the corvette at the time of her capture, and transmitted to him: an expectation of which documents prevented him from recurring to the subject sooner."

Mr. Daniel Bedinger, who seems to have been charged with the obtaining of testimony, wrote to the governour on the 25th March, 1795, thus. "In compliance with your request, when I last had the pleasure of seeing you, Mr. Cowper and myself called upon the captain of the French corvette, taken off the capes last January, and requested from him a statement of the circumstances, relative to his being captured. He at first appeared willing to comply with our wishes, and promised to meet us the next day for that purpose; but did not however appear. He was afterwards again applied to, severally by Mr. Cowper and myself; when he discovered a degree of unwillingness; for which we could not readily account; observing at the same time, that he had immediately on his arrival at this place (Norfolk,) rendered to the French consul a full and circumstantial account of that transaction."

If from two French citizens, one of them, the commander of the vessel, the other, a vice consul of France, not a word could be extracted; which did not extenuate the capture; where were the agents of government next to look for evidence? The last hope was in a pilot named Butler; the material part of whose affidavit has been forwarded to you. He deposes, "That on his arrival in

Lynn Haven Bay, as before related, (about the beginning of January last,) he found there properly moored the French sloop of war l'Esperance, a prize also to the Argonaut: that he understood from the officers and people on board of the Resolution, that the said sloop of war had been taken some days before; brought to where she then lay, and there valued or appraised: that the admiral took her to himself at the said valuation or appraisement: that the said prize sloop of war l'Esperance, was then and there manned and fitted for a cruise: that offers were made to him the deponent, by the admiral himself to engage as a pilot, for said sloop of war during her intended cruise on the coast, which offers he this deponent rejected: and that when he was at length permitted to leave the Resolution in order to return home; the prize sloop of war l'Esperance, was still moored in Lynn Haven Bay."

The language of the French vice consul after a full conference with the captain of the corvette; the captain's procrastination, promise and breach of promise, as to testimony, and some other circumstances had admonished us not to be precipitate. A letter was therefore written to Mr. Hammond, adapted to the information in our possession; and too plainly develops the sincerity of our government, to be omitted; were it not, that its length and that of the letters associated with it recommend that the copies of them be detached from the body of this.

On the 5th instant Mr. Hammond transmitted to me a counter declaration of Butler, to the following purport. "That he had never any knowledge of the appraisement or equipment of l'Esperance: that no offer to go on board her as a pilot for the coast was made to him by admiral Murray: that he never deposed to many of the articles said to have been sworn to by him: that he can neither read nor write, but from what he has heard, he presumes Mr. Bedinger has perverted his deposition, as he saw fit: that the Harmony was in possession of the British, when he boarded her, whether it was on the day of her detention or a day afterwards he cannot determine:" and "that Mr. Bedinger waited on him and told him, it was the governour's desire he should depose to what he knew relative to the ship *Harmony*."

This counter declaration is not offered as a paper to which much confidence is due: but suspicious as it is, it advises us to pause, before the government was compromised upon Butler's single affidavit. I have therefore entreated the executive of Virginia to remove all ambiguity. Mr. Bedinger has been aware of Butler's recantation: but as he had not seen it, the certificates which were forwarded from him by the governor of that state, have perhaps been less conclusive in relation to the corvette, than they will be some short time hence.

This is the sum of every syllable which we know concerning l'Esperance. The train, in which the subject now rests is in the opinion of the President the most eligible one. The facts will be explored, with all the expedition in our power. When they are fixed, we shall not be in the rear of our obligations.

Fourth, You will correct me, sir, if I err when I suppose, that you build your complaint of the repairs of the Thetis upon the despatches from the governor of Virginia, which I had the honour of enclosing to you on the 24th of February last. Being unapprized of any other statement, I shall direct my reply to that which is disclosed by those papers. The British consul Hamilton informed the collector at Norfolk on the 2d of January, 1795, that the "Thetis and Cleopatra having received some damage, it would be necessary for them to have repairs, before they could again proceed to sea: that they were both expected there the first fair wind for that purpose, and he presumed would be permitted to pass the forts into that harbour."—"The collector thinking himself unwarranted to do any thing in the business," the lieutenant colonel of the militia of Norfolk was applied to, and "he conceived it his duty to give orders to the commandant of the forts, not to suffer the frigates to pass, until the governor's orders should be had thereon. The executive of Virginia resolved that "ships of war circumstanced as those mentioned by the British consul, may be permitted to enter our ports to fit them *for sea*; provided they have not made prizes of the people or property of France and come in with their prizes into the ports of the United States." Not being prohibited by the laws of neutrality or the treaty, from permitting in our ports to any of the belligerent parties naval equipments, of a nature not warlike; the rules of August 3d,

1793, declare, that, "equipments in the ports of the United States of vessels of war, in the immediate service of the government of any of the belligerent parties, which if done to other vessels would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the 17th article of the treaty of amity and commerce with France."

To the kind of repairs done to the *Thetis*, I am as yet an absolute stranger. That they were not warlike, is rather probable from the expressions of the Virginia executive. That they were not warlike is more probable still from their acquiescence. Every report accords with these conjectures. But notwithstanding this strong appearance, that the rules have not been violated, an inquiry has been instituted.

Third, The third symptom of a British predilection is conceived to be, "That the militia have as yet been assembled, only to support the arrest of French vessels and their prizes." This, sir, can have but one of two significations: either that they have not been designated by the standing instructions to the officers in the states, as proper to be employed in favour of the French on those conjunctures, in which the militia would be the appropriate instruments: or that there has been a positive failure so to employ them.

Our constitution, laws, and distribution into several independent states, naturally marked out the governours, as the coadjutors of the federal government in maintaining our neutrality. Their quality of commanders in chief of the militia was particularly selected; when they were desiring to co-operate; and the militia *was* pointed out, as the resource upon an extremity.

If it has been, that from negligence or design, France has been disappointed in succour from the militia when it *ought* to have been displayed; specify the instances, sir, they shall be immediately analyzed. In the meantime permit me to observe, that it would have been not a little extraordinary to refuse the aid of the militia to one belligerent nation, how justly soever demanding it: merely because the same or a like case had not occurred. and might not occur in regard to another.

Fourth, The predicament of a neutral nation is always peculiar and delicate ; and eminently so, while it defends itself against charges of partiality from one of the warring powers, lest it should seem to palliate the misdoings of another. But you are not to infer from my justification of the Executive, that the validity of the proclamation of blockade is assented to. We did read on the 10th of April, 1795, a publication from his Britannick majesty's consul general for the middle and southern states of America giving publick notice, that he had received official communications that the islands of Guadaloupe, Marigalante and Desirade, were by proclamation, issued by his Britannick majesty's general and vice admiral, commanding in the West Indies, declared to be in an actual state of blockade ; and that neutral vessels were by that proclamation prohibited from attempting to enter any of the ports or places of the said islands, with provisions or supplies of any nature or kind whatsoever under the penalty of being "dealt with conformably to existing treaties, and as warranted by the established laws of nations." So highly valued has the West Indian commerce always been, that this exclusion was often revolved in the mind of the Executive. It was acknowledged, that neutrals are interdicted by the law of nations from a blockaded port. From some quarter or other the blockade must be notified ; or else neutrals would be a constant, unsuspecting prey ; not being in a condition to collect this information for themselves. Who then are to notify the military investment of a place ? Surely not the besieged : but the besiegers ; whether we consult principle or practice. The check which neutrals have, upon a wanton and false parade of a siege, is the same with the check upon any other groundless pretence. We might indeed have remonstrated ; but with what colour may well be imagined, when this department was unprovided with any document upon which the rescinding of that edict could have been urged. If rumour were a fit guide, who can pronounce, on which side rumour preponderated, when stripped of the exaggerations, which a host of passions had gathered together ? We had, it may be said one effort remaining : which was to promulge to the citizens of the United States, that the proclamation was null and void *as to them*. If after this defiance of that act, any American vessel had risked, and incurred confiscation, the

government would have been importuned for something more than the *general protection*, which is the birthright of all our citizens. The clamour would have been for a *special indemnity*; and under such a cloak, frauds innumerable might have been covered.

If by the forfeitures, incident to a blockade, our own citizens have suffered, we are as much at liberty to controvert the existence of the blockade, as we were when it was ushered into the world through the newspaper. If inconveniences have arisen to the French Republick by an interruption of our commerce with those islands; let them be ascribed to the actual position of our affairs. It may, however, be remarked, that the Executive have not been unmindful of arrangements which might soften the severity of the laws of blockade.

Fifth, The first part of your fifth allegation, which implies "That the United States quit the neutrality which they profess by subscribing through an excess of circumspection (menagement) to an order, like the proclamation" has been just anticipated. To the second part, which asserts that we also quit the neutrality, which we profess by being *unable* to maintain our treaties; we answer that although to the best of our ability and understanding we *have* maintained our treaties, yet if any *occasional* or *real inability* has been shown this cannot be transformed into a renunciation of neutrality. Prove to us that this supposed inability has sprung from an unfriendly motive; that it has not been inseparable from the infancy and situation of our government; that it could have been remedied by any expedient at our command, except *war* or *reprisal* or the *forerunners* of both; then and not till then, will it be incumbent upon us so to account for it further. "That we have been obliged to abandon our relations exclusively to England" (as in the third place you have affirmed) is a question of fact between us. We deny it. The American navy cannot yet dispute the ocean; but American rights have not been relinquished. Of the time, mode, and style of enforcing them, *the United States* are the *sole judge*.

Sixth, Throughout your letter, you have dispersed allusions to the late treaty of the United States with Great Britain. To this, as to a centre, the whole series of your observations has tended, and we are taught from one pas-

sage at least, to view it as a prelude to representations, which you meditate to the French Republick.

That treaty has been communicated from the department of state, only to the chief magistrate of the Union. But it will not be conceived, that reasons peculiar to the case, caused this reserve. We were acquainted with no duty towards foreign nations, which should lead us to infringe the usage of suspending the publication of treaties, until the ratifications have been exchanged ; or to impart to them more than has been already imparted to the committee of publick safety in France by our envoy in London through our minister in Paris. Yes, sir, you say, that you demand justice only : justice you shall have ; and I repeat in the name of the President the promises, which I admit myself to have often made to you, that our treaties with France shall be sacred. No nation upon earth can control our will, unless preceding engagements be violated. To save the rights of the French Republick was an ultimatum in the instructions to our envoy : the President and Senate are the final arbiters whether the treaty shall exist. It is with them to pronounce, with whom treaties shall be made, and upon what terms ; they will doubtless move under the awful responsibility attached to the guardianship of national honour, faith and independence.

The President is willing to superadd any orders, which can with propriety be expected from him, for the execution of our treaties with France ; if any such can be suggested beyond those already given. Every charge which can be brought against the government, we shall meet at the proper season, and in the armour of political integrity. We confide that the wisdom and magnanimity of the French Republick which resisted past machinations to disturb our harmony, will receive with caution, suspicions which may be hereafter thrown on our fidelity. For her happiness we pray, and may our connexion be perpetual.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 67.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republic near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 20th Prairial, 3d year of the French Republic, one and indivisible, (June 8, 1795.)

SIR,—Your letter of the 29th of May was received by me on the 2d instant. The different subjects therein discussed, meriting the most serious consideration, I have taken some time to prepare an answer which I shall now give with all the candour the subject requires.

In the first place I shall observe, sir, that in writing my letter of the 2d of May in consequence of a crowd of complaints which were brought to me, I had not proposed to myself a plan so extensive as that you have pursued in your despatch. It is observed that in order to give a motive for the conduct of the Executive in every circumstance that might infringe the interest of France, you have united under a single view my former and my present representations. I shall now communicate to you, freely, what the whole of your letter appears to me to enforce, and the reflections its object has otherwise suggested.

What, sir, is in question between us, and upon what can we rest our discussions? Upon the prescriptions of positive contracts or the general laws of nations. France being in a state of war, considers America as a neutral and an allied power. In the first situation she has rights common to all the belligerent powers; in the second she has particular rights which she is entitled to by treaties, and which America can allow her without ceasing to be neutral. If therefore, on the one hand, positive engagements giving us a right to certain privileges have been neglected or executed with indifference; if on the other certain rights common to all are become doubtful as to us, by too much moderation in regard to the acts of other powers; I would say if your neutrality has been restrained by their arbitrary decisions, my complaints have been founded: for it is that to which they are reduced; they rest upon fact alone: and still do I require it to be observed that I have hitherto

avoided touching the latter point, and that latterly I have spoken on it with all the circumspection and regard that could be desired, although my instructions oblige me constantly to ask what measures the United States take for the efficacious support of the neutrality of their flag.

The first object then is that upon which a great part of my correspondence has treated since my arrival here. A correspondence which on both sides could not but be painful. I wrote to you in the first instance on the useless vexations, which the prizes of our privateers sent into your ports, were permitted to suffer. These vexations, have hitherto been continued under different prettexts. The admiralty courts have always ceded to the entreaties of our enemies for their intervention in prize causes, in truth, frequently and almost constantly by using the double plea, of which you spoke to me, that is to say by arguing either of seizure within the jurisdictional line of the United States, or of armament or of augmentation of armament of the capturing vessels in their ports. On this subject, sir, you request me to specify to you a circumstance in which a prize was arrested which did not come under that denomination, and you take the trouble to establish that they have a right to intervene in every case that can be brought under those heads. In the first place, sir, I never have, at least to my recollection, contested the right of your courts or of the government to interfere in matters of the nature of those you mention. But I have complained of the facility with which prizes have been thrown into those two classes which do not belong to them. I might, therefore, in answer to your request cite to you a great number of affairs of the kind to which I allude, and it will be easy more at leisure to support them from the different consulates. I could for example bring on the tapis the affair of citizen Talbot, which is not yet determined, and in which your courts contest a prize upon the validity of a commission delivered by a governour of Guadaloupe. This case as you will see does not come within the two you mention. They support themselves in this circumstance with the treaty which the United States have with Holland, when that very treaty gives to us the privileges of the 17th article of ours : and I could cite in proof of the facility with which they bring under the two classes in question, prizes which do not belong to them, the affair of *les Citoyen de Marseille*. This

privateer armed and commissioned at the Cape arrived here armed and commissioned, and having sailed from thence, had just sent prizes into New York and Charleston. In the former port her prizes have been sold without opposition, and in the latter they have been seized and judged illegal. With these I conclude, as it is not intended here to give a list of the cases, I confine myself to assuring you that almost all these prizes have been subjected to those vexations, and that one of the most unpleasant parts of my functions has been to answer the just claims of my injured countrymen. I could have wished that the government had taken decisive measures as well to prevent unjust chicaneries as to maintain its regulations on the armaments or augmentation of armaments in the ports of the United States. In 1793, something similar was done. In the first instance the local, and in the last, the general government had the power of deciding cases of capture within the limits of the United States, and in the interim the contested prizes remained in the hands of the consul. These regulations appear to have been communicated by the correspondence of your department with my predecessor on the 25th June, 1793. Measures for terminating the examinations in a summary manner, by voluntary arbitrations between the parties were afterwards instituted, or by the cross examination of contradictory witnesses upon which the government of the United States were to judge. These were communicated in November, 1793. It were to be wished that these proceedings had been extended to the cases of prizes legally made by vessels duly commissioned, and contested at all hazards by our enemies before your tribunals. I have since proposed to you as an additional measure for expediting these affairs to subject the prosecutors to furnish security for the damages occasioned by their suits. My proposition was not accepted. The former rules fell into disuse: our enemies having the choice of conforming to them or of recurring to the courts, prefer the latter in which they have the advantage of local circumstances; and by that means they have succeeded in creating prosecutions which at all events deceive us, often even by obtaining decisions which encroach upon our treaties, since according to your theories, your courts are uncontrollable in such matters. My desire had been to prevent their being put into their hands by the previous

intervention of the Executive upon the simple question, is there ground for prosecution or not? and this method in cases where there was absolutely ground for intervention on the part of the United States, would have been at once more natural and more conformable to the treaty, which by name interdicts the *admiralty courts the right of taking cognizance, &c.* You say that it is impossible that your courts should not grant protection *to your injured fellow citizens who claim it*, unless, you add, it is wished that the lives and property of our citizens should become the sport and prey of the *first sea rover*. There is no doubt on this head. But if any fortuitous events of this nature have taken place, I should be the first to take notice of them. I do not defend pirates, and I see with regret that all the armed vessels of my nation which bring prizes into the United States suffer under such a bitter and I also add such an ill founded reflection. If *sea rovers* exist who systematically attack the property of your fellow citizens, it is not certainly among the French mariners. I doubt whether you can reproach us of another case similar to that in which the *Concorde's* tender seized in Boston Bay an *English advice boat* bound to Halifax. You will doubtless recollect that my dissatisfaction was not evinced in an equivocal manner; and I believe that in many stronger cases than that, the United States have been far from obtaining from any other quarter so decisive and so sincere an act of justice. On touching upon the article of recrimination which I conceive it my duty to make to some parts of your letter, I in two words return to its commencement. You remind me of scenes long passed, the energetick measures they gave rise to, and the patience and generosity of the government under those circumstances. I cannot believe that you wish to establish similitudes between the present and the past. Were I for a moment to admit it, I should remind you of the proclamation which I published on my arrival; and I should then content myself with requesting you to cite the cases, in which I have authorized, in which I have permitted contraventions of the laws of the United States, and of the regulations of the President, in the first instance, and afterwards of my engagements.

Were the history of the prizes brought into the United States by our privateers since the present hostilities, brought into view, you would see the various cases in

which sometimes the governours, sometimes the courts of justice, sometimes both, have taken cognizance. You would doubtless be puzzled amidst all these to find the part of the 17th article of our treaty, which specifies that we may bring our prizes into the ports of the United States, without the *officers of the admiralty* taking cognizance of them.

Besides, sir, you have not observed that my complaints have been very importunate on that part of the treaty. If you give yourself the trouble to examine the time at which my correspondence began to be more pressing and more animated, you will see that it was not on the affair of the prizes, which I troubled you most. But I allow that I have become more pressing since it appeared to me, that the English vessels were admitted into your ports in contravention of our treaties, and in contempt of all neutrality, after having made French prizes and pillaged your vessels under the single pretext of trading with France.

The 17th article of our treaty, in my opinion leaves no doubt that *all asylum should be refused*, (except in cases of distress or of tempest) *to the English vessels who shall have made prize of French vessels or of French property*. Under this persuasion it was, that I early complained against the admission of every English vessel of that denomination, it was this persuasion which induced me to write my letter of the 18th September, in answer to yours of the 7th of the same month, in which I found a construction of the treaty which to me appeared new. I admit however, that you had notified to me in your letter of 20th August, preceding the regulations of the President of the United States, establishing it, but I was so far from suspecting this article, that I did not in reading it observe it. These regulations are not among the papers of the office of legation, which leads me to believe that they never were notified to it, before the 20th August last. If no complaint has ever been made on the subject, the reason most undoubtedly is, that the English had not then a maritime force upon the coast, and that they had not dreamed (as we never thought ourselves that they had the right) of making use of your ports as a station, after having committed the acts for which the treaty pronounces against them a positive exclusion. Therefore, sir, the

silence of the envoys of France with the United States, cannot be argued on this subject.

On analyzing all my complaints upon this part of the treaty, they are reduced to the entry of English vessels which had captured French vessels or French property ; to the admission of these vessels with their prizes, or to the admission of their prizes alone. There never has been any hesitation on the last point. Upon the rest the greatest part of what I have written, is built, I avow according to your construction, upon a false basis. But even admitting that construction, the *Terpsichore* should not have been admitted at Norfolk with the privateer *la Montagne* which she had captured : and the English ship *Argonaut* should not have entered with the corvette *l'Esperance*, nor have equipped the latter in your waters ; on the first point you remind me of all the federal Executive has done, and of my own letters in which I have expressed my satisfaction. But, sir, if I could not but be satisfied at that time with the performance of the promises of the government, reflect I pray you whether I have equally had reason to be so with what has passed at Norfolk, and at a distance from it ; and my complaints in general have been grounded upon what happened far from its immediate inspection. A short statement of the facts which appear not to be entirely known to you, will enable you to judge whether my suspicions on the slackness of the local governours or those under them, are groundless.

The French consul at Norfolk on the 31st August, wrote to request the expulsion of the frigate *Terpsichore* and of her prize the privateer *la Montagne*. Governour Lee after a lapse of twelve days answered him. He answered on the 12th of September, *that he was going to make inquiry*. It appears that the inquiry was not made, for on the 25th September, two other English frigates entered Hampton road with two prizes made upon us, and the same day the vice consul sent a new complaint to the executive of Virginia. The inquiries of governour Lee could not have been very extensive, nor have been made in much haste, for it would seem that if on replying on the 12th September, to the vice consul, he had written to the officers whom it concerned, and given them orders, we should not at this moment see the evil renewed thirteen days after that reply. The vice consul received from the

lieutenant governour an answer dated the 9th of October. In this answer the lieutenant governour pretends not to have read the second letter from the consul of the 25th September, and does not reply to it: he speaks of the affair of the *Terpsichore*, of which the vice consul did not mention a word in that second letter, she having sailed at that time, as you justly observe, that is to say, twenty-five days after her entering into your ports with a French prize.

You here ask me, sir, where I find reasons to support a predilection for England. I shall answer you with the same freedom you interrogate me. I observe that our consuls are amused by specious correspondences merely to cover inactivity—that our enemies are permitted to do what they please from the want of precise instructions to the commandants of ports, which should authorize them to act immediately on such contraventions of the treaty taking place. Certainly, sir, it is not requiring that the correspondence *should travel* with extraordinary swiftness, to complain that at one hundred miles distance from the seat of the government of Virginia two successive infractions of the treaty were committed in the course of one month. But how is it wished that things should be rigorously executed when on the 9th October, that is to say, thirty-nine days after the first complaint of the consul, the lieutenant governour wrote to the militia officers without mentioning the second infraction, communicated to him relative to the *Terpsichore* alone, and gave them what instruction? Not that of causing this frigate to depart if she was still in the river, *but to make inquiry into the situation of the Terpsichore and of every other vessel in like circumstances and inform of the result.* Certainly, sir, it appears that the correspondence *travelled* with much greater swiftness, formerly, if we may judge from the letter of the governour of 22d August, 1793, addressed to the customhouse and militia officers, which was among the enclosures of your letter of 24th February. He says, in speaking of the prizes suspected of having been made by vessels armed and equipped in the ports of the United States, *which can scarcely be applied but to French vessels*—“If those prizes come into the ports of your district, you will immediately have them seized by your militia.” On the 5th of December following, he gave additional orders for having

seized in like manner the prizes *alleged* to have been made within the jurisdictional line of the waters of the United States, and then to inform him of such seizure. Those orders are still pursued, and as there are few prizes, as I have already said, which will not be *alleged* to have been made in the waters of the United States, or by vessels which have augmented their armaments in them, we still see prizes *arrested in the first place*, and examined afterwards. Why did not Mr. Lee authorize the commandant at Norfolk to cause previously to depart every vessel arriving with a prize? It was on again finding *those ancient orders* presented by him as a proof of his activity in doing justice to my complaints, that I could not avoid saying I had no need of them to convince me, that the most prompt severity has never been omitted to be employed towards us. If I were disposed to cite new examples, I could mention the affair of the Favourite, on board of which vessel armed men were sent to search in the port of New York, without saying a word to the consul residing there, and without observing the most common respect due to a publick vessel by the law of nations, and stipulated for ours by treaty. I might cite the vigour with which a vessel, going to Guadaloupe and suspected indeed of an infraction of the rules of your neutrality, had been arrested at Norfolk. I leave it to impartial men to compare this energetick conduct with the orders lately given against the English vessels which refused to respect your neutrality, and the alteration of those publick orders almost immediately after they were issued.

As to the affair of the corvette l'Esperance it was vain to support the conduct, in that respect, with what the consul of the Republick said on the subject. The Argonaut which took her, should not have been permitted to enter more readily than herself; and she having been partially equipped in your waters should have been proscribed. I shall not take the trouble to examine the deposition of Butler the pilot and his retraction. To judge of the merit of the whole of this *little action*, I do not know the interval which passed between the *pro* and the *con*, and in which officious persons may have informed Butler that he had been imposed on or mistaken.

After having reviewed the different particular cases upon which I have complained, permit me to give an

opinion which has weight with me, which is, that it is impossible for me among the constructions given to that part of the treaty to discover the intention of the two contracting parties. By the treaty of alliance, France relinquished her former neighbouring possessions to the northward of the United States in which she had ports of great convenience during her wars. By the treaty of amity and commerce signed the same day, she conceived that she assured to herself some advantages as an indemnification in the ports of the United States themselves of which she had in part deprived her enemies. This latter treaty has never said that there should be given an *asylum to capturing vessels coming with their prizes*, it says that *asylum shall not be given to any vessel having made prizes*. Permit me, sir, to say that this is not a *construction* but an *addition* which you give to the treaty, which are different things. According to this addition it were sufficient when I complained of the repairs made to the *Thetis*, to reply that she had a right to them.

From these forced constructions it results that the belligerent powers raise pretensions which were not looked for, and acknowledge themselves that the meaning of our treaties appears to them obscure. The correspondence which took place on this subject between you and the minister of Great Britain, is very important to consult on this point. Have not you yourself been struck with this avowal of Mr. Hammond, that the treaty specifies only the conduct to be observed towards the *capturing vessels*, and *says nothing of the prizes*? What trouble had you in urging your construction when you answered him—"I hope, sir, that you will not interpret the article so literally as to pretend that it refuses asylum to capturing vessels only, for it excludes every vessel which shall have made prizes on the French," without doubt, sir, that is the true construction, every thing becomes clear when that is maintained; the capturing vessel as well as her prize are not admitted into your ports.

As to the rest, sir, as you have observed, a difference of opinion between the agent of a power and the government to which he is sent, is not by any means conclusive. I adhere with all my heart, with you to the principles contained in the part of Mr. Jefferson's letter which you cite; but I observe that there is no reason to make me the reproach you

seem to insinuate. I ought to insist on my manner of construction, and present it to you under all its forms as long as you do not inform me that the President cannot admit my observations. Now you have done so, I should content myself with referring them to the French government.

I have gone over in detail the different points stated in our correspondence ; let us return to that part of your letter which considers the neutrality of the United States.

I conceived, sir, that the respect and circumspection with which I had touched on this question, would have spared me the bitter reflections which your letter appears to contain on that matter. However great may be my desire to enter into details for my own defence, yet I shall wave them, from the same motives which dictated my first letter. But, sir, if these sentiments had not been with me so weighty, I could at least take off the veil which you seem willing to leave over the measures of the English, and refute the application of the principle upon which you ground the silence of the government of the United States on the subject of these measures. I might make it doubtful whether the arbitrary proclamations of the English government and generals were but *the ordinary obstructions with which neutral commerce is assailed in all wars*. I might in like manner hesitate to admit that the federal government had not sufficient grounds to demand their revocation. But that would lead against my inclination into an examination of the cases in which a neutral power should actually acknowledge the legality of an interruption of its commerce, such as those of a place *blockaded* and contraband. I should also be obliged to examine whether the principles with which the English government endeavour to support itself are consecrated by the law of nations, or whether they are not rather established to serve on the present occasion ; whether in changing the language the cabinet of London has changed its measures ; whether the successive orders of the 8th June and 6th November, 1793, and of the 8th January, 1794, are not variations of the same system, to which the depredations still exercised on your commerce, are the sequel ; whether in a word it is true that the United States are suffering with all neutral nations under the same insults, or particularly sacrificed to exclusive vexations. In enumerating these things, I only remind you of what has already come to your knowledge, and trace facts against

which I know you are not less indignant than France against whom they are specially directed. The history of your neutrality would perhaps prove my assertion, that it has been a prey to the arbitrary conduct of Great Britain, and would have served as a justification of what I might and should represent on the subject.

In fact, from the evidently precarious situation of the neutrality of America, and from the vexations to which she is subjected, could I not show that this neutrality is in a violent situation to which the United States cannot consent; from this violent situation would I not have reason to infer the necessity of an energetick and vigorous reaction, and of a solemn reparation, which by giving to America what her honour requires, would have manifested towards the French Republick the inclination and intentions of your government? I would have remarked that these reparations had been announced at a certain period, but that if publick report were believed they appeared as far off as ever. From this contradiction between the promises and the performance of them, this consequence seems to arise, that the United States had not yet established their neutrality upon as respectable a footing as France desired and had instructed me to demand: I was going to conclude that your government had not done in this respect every thing in its power, and I feared lest this backwardness should arise from a lukewarmness towards its ancient ally, who has not ceased, on the contrary, to testify to it how much she desired to see the bands which connect the two countries brought closer together. This idea suggests to me a reflection, that the friendship professed by the United States towards our Republick, and of which they have on several occasions repeated assurances, does not permit them to alter their situation towards our most mortal enemies, to our disadvantage and amidst hostilities; the origin of which undoubtedly take date from the independence of America.

These remarks which I have long revolved in my mind, led me, sir, accidentally to speak to you of the treaty, in my letter of the 2d of May; but feeling all the circumspection which the silence observed on that act prescribed, I only presented doubts to you, and did not even imagine that the manner in which I wrote to you would have given rise to a controversy between us. Besides, sir, it

would be superfluous for me at present to commence such a subject with you. I therefore close by appealing, specially to the attention of the federal government upon points which truly interest the French Republick, to wit—the *energetick and liberal execution of her treaty with the United States, and the support of their neutrality upon a respectable footing towards and against all*. I conceive it my duty to point out a thing as infinitely desirable; which is that nothing definitively be concluded as to the treaty submitted for the ratification of the Senate, until my successor who is momentarily expected shall have communicated to you the instructions which without doubt he has received upon that important subject. I conjure you, sir, to submit this reflection immediately to the President.

I have but one word more to say, sir, on the close of your letter, in which you recur to contrasts between the present and the past. I cannot believe that the President *had me in view* when you insinuate on his part that endeavours are still making to injure the harmony existing between the two nations. I do not think that any one has ever given greater evidence than myself of a sincere desire of cultivating it. Still less can I admit, notwithstanding some of your expressions, that your object was to inspire me with fear as to the manner in which I have conducted. You know very well, sir, that a publick man who from any personal considerations whatsoever should compound with his duty would be unworthy the confidence of his country.

Accept, sir, &c.

JH. FAUCHET.

No. 68.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republick. Department of State, June 13, 1795.*

SIR,—I have not been able to acknowledge sooner your letter of the 8th instant, which I had the honour of receiving on the same day.

* It appears that after this letter had been draughted, and while it was transcribing, Mr. Adet was received as the minister plenipotentiary of the French Republick, to whom in consequence it was sent.

If the plan, pursued in mine of the 29th ultimo, be more extensive than the one proposed in yours of the 2d, you will ascribe the enlargement of it to my solicitude to remove every dissatisfaction, felt by the minister of our ally. A part, however, of that plan being to collect with fidelity the facts applicable to your various charges, and to comment upon them with candour, I shall not relinquish it, in now replying to the old or new matter of your last letter. But I must be pardoned, if I pass over without much stress, any general declarations, which are not susceptible of a precise argument. For how shall I defend our government against undetailed insinuations, like these: "That positive engagements, which give France a right to certain privileges, have been neglected or executed with indifference: that other rights, common to all, have become doubtful, for you by too much submission to the acts of other powers: that you could cite a great number of examples: that it will be easy, more at leisure to have a collection made of them in the different consulates: that almost all the prizes have been subject to artifices: that one of the most disagreeable parts of your functions has been to reply to the just complaints of your injured fellow citizens," &c.

Let me, therefore, recur to your *instances* of our delinquency. These are, 1st, That the courts of admiralty have always yielded to the importunity of your enemies for an interference with your prizes: 2d, That in the affair of citizen Talbot, which is not yet terminated, our tribunals have contested a French prize upon a question of the validity of a commission, delivered by a governor of Guadaloupe, which falls within neither of my two principles: 3d, That the privateer le Citoyen de Marseilles armed and commissioned at the Cape, having arrived in the United States, armed and commissioned, and having again gone out from hence, sent prizes into New York and Charleston, the former of which were sold without opposition, and the latter have been seized and adjudged illegal: 4th, That government did not adopt as decisive measures for preventing the unjust chicaneries practised upon French prizes, as for maintaining its own rules respecting armaments and the augmentation of force within the United States: 5th, That there was a tardiness as to the Terpsichore, and she ought not to have been admitted

into our ports with her prize, the Montagne, nor the Argonaut with her prize l'Esperance, which was equipped there: 6th, That armed men were sent on board of the French ship Favourite, at New York, to search her, (*faire la fouille*) without saying a word to the consul, who resides there, and without observing the most common respect due to a publick vessel by the law of nations, and stipulated for French vessels by our treaties: 7th, and lastly, That the violence under which our neutrality labours, required an energetick vigorous re-action, and a solemn reparation, which by giving to the United States all that their honour demanded, would have manifested to the French Republick the good will and intentions of our government; that the omission has proceeded from a lukewarmth towards our ancient ally, and that our situation ought not to be changed towards your mortal enemies, to your disadvantage, and in the midst of hostilities, the origin of which is undoubtedly in the independence of America.

First, You have cast the imputation on our courts of admiralty into an ambiguous shape. For the first strong assertion of their having always yielded to the importunity of your enemies, is afterwards diminished into "*a facility*," with which they deem your prizes untenable. Is the denunciation aimed at their head or their heart? You admit the "right of our tribunals, or of our government to interpose" in captures within our jurisdictional line, or by cruisers originally armed or increased in their armaments in our ports. Their judgment must be exercised; and they may have erred; but this no man can pronounce positively, until every circumstance shall be laid before him; and I again pledge myself to discuss the cases when you shall enable me by naming them, to institute the proper inquiries—What if they have *erred*? When a party thinks himself aggrieved by the sentence of an inferior court, he may appeal to the superior courts of review. If no appeal be offered, it is an acknowledgment of the justice of the sentence by the parties themselves, and conclusive. If an appeal be admitted, and the judges in the last resort give sentence according to their conscience, though it should be erroneous; yet as "in doubtful questions different men think and judge differently, all that a friend can desire, is,

that justice should be as impartially administered to him, as it is to the people of our own country."

A defect of integrity in our judges will not be vindicated when it shall be once ascertained; and if such a blot defiles the records of the American forum, by detecting it you will deserve the tribute of being instrumental to the saving of our national honour. It is with an elevated pride, however, that we challenge the very possibility of this disgrace; and disbelieve, that political predilections have ever transpired in any of their decrees.

Second, The district court of South Carolina, and the circuit court held for the United States in that state, have both condemned Talbot's prize. But she was condemned, not because the commission, delivered by the governor of Gaudaloupe, was invalid in itself; but because he, "*having armed his vessel, being an American bottom in an American port*, proceeded thence to Gaudaloupe for the express purpose of changing the property, and applying for a commission, obtained the commission within two days after the sale of the vessel, and under colour of that commission made the prize." The authority of the governor to grant commissions was not denied—the effect of it upon an American vessel, armed in an American port, for the express purpose of cruising under it, was only repelled. It is true, that a final decision has not yet taken place; the reason of which is, that the captors, having already been defeated in two courts, are resolved to try the chance of the supreme court of the United States. Not having access to the proceedings in this case, I cannot undertake for any facts, which they may contain; but I have been informed from a respectable quarter, that, notwithstanding the *apparent* sale of the vessel, the prizes which should be made by her, were principally, if not altogether, to be the property of the American citizens, who were her owners, when she sailed for Gaudaloupe.

Third, That a difference of opinion has prevailed at New York and Charleston as to the prizes of le Citoyen de Marseilles, is at least an evidence, that the interruption of their sale was not the consequence of a governmental concert. It may be easily accounted for by supposing, as the truth is, that the culpability of that privateer was unknown at New York, and has been proved at Charleston.

Mr. Dallas, the Secretary of Pennsylvania, wrote on the

24th January, 1794, in the name of the governour of that state to the Secretary of War, requesting to be informed, whether the opening of *five* port holes on each side of that vessel for the mounting of guns, could be deemed an augmentation of "her military equipments." The next day the Secretary at War transmitted to the governour, the decision of the President, as follows, "I have received a letter from the secretary of the commonwealth of Pennsylvania, dated the 24th instant, in which it is stated, that an application has been made to you to open five port holes on each side of the French vessel, called the Citizen of Marseilles, and requesting the opinion of the Executive of the United States, whether under the circumstances of the case, the proposed alteration could be deemed an augmentation of her military equipments."

"This letter, sir, has been submitted to the President of the United States, who has directed me to inform you that the said port holes having been closed previously to the arrival of the said vessel in this port, that the opening of them, in order to mount cannon therein would in his judgment be as much *an augmentation of the force* of the said vessel as if the port holes were now to be cut for the first time, and that the measure, therefore, is to be prevented."

"It is to be remembered that the same principle operated in the decision of the President in July last, relatively to the British letter of marque, ship Jane, whose force was reduced to the same situation it was at the time of her arrival, by closing her new port holes, dismounting the additional cannon, and destroying or relanding her new gun carriages before she was permitted to leave the port."

Notwithstanding this prohibition she was represented in October, 1794, as having increased her armament; but the officers of the customs uninfluenced by the rage which has been ascribed to them against French cruisers, reported in her favour. How greatly therefore it must astonish you to learn, as has been represented to me, that after these visits she took in *several guns in the river Delaware*; that this has appeared to the satisfaction of a district court; and that a writ of error is now depending upon this point before the circuit court? The arrest, therefore, of her prizes comes within your own acknowledgment, that the

tribunals of the United States "have a right to interpose" in cases of an augmentation of the armament of capturing vessels in our ports.

Fourth, The measures, chosen at first by the government for enforcing its rules, were through the agency of its own executive officers, and those of the states. Their impartiality will be seen in the suppression of British as well as French armaments in our ports; and in your wish that they had continued to be used, as they were in the year 1793, in relation to the prizes, which were questioned.

But it will strike you, sir, upon reflection, that although the Executive was at first competent *in authority* to retain under his special direction prizes, made by vessels, which had been equipped in derogation of our sovereignty, it would have been more expedient to refer them to the courts. Until the law of fifth June, 1794, their jurisdiction could not have been said to be established. Being conferred by law, the President could not withdraw it. Or if he could have withdrawn it, there was no reason to do so. For who are our judges? Men nominated by himself from a confidence in their virtue, wisdom, firmness and disinterestedness: men, approved by the Senate from the same confidence: men, whose forms and habits peculiarly qualify them for nice examinations of evidence and law: men, who judge, not in your phrase according to "*localities*," but universal law. Undoubtedly, as our citizens may be harassed by legal process, so may foreigners; but, as the protection to our citizens, is in the damages which the courts may award, so will it be extended to foreigners.

That any of the contested prizes remained in the hands of the consuls was originally an act of respectful civility to the French; but no executive instruction could perpetuate it against the will of the judiciary. This is expressed in a letter from my department to your predecessor on the 9th of September, 1793, thus: "The intention of the letter of June 25th, having been to permit such vessels to remain in the custody of the consuls, instead of that of a military guard (which in the case of the ship *William*, appeared to have been disagreeable to you) the indulgence was of course to be understood, as going only to cases where the Executive might take or keep possession with a military guard, and not to interfere with the authority of the courts of justice, in any case wherein they

should undertake to act. My letter of June 29th, accordingly, in the same case of the ship William, informed you, that no power in this country could take a vessel out of the custody of the courts, and that it was only because they decided not to take cognizance of that case, that it resulted to the Executive to interfere in it. Consequently this alone put it in their power to leave the vessel in the hands of the consul. The courts of justice exercise the sovereignty of this country, in judiciary matters, are supreme in these, and liable neither to control nor opposition from any other branch of the government." Hence this temporary and gratuitous permission, is not to be considered as an "ancient regulation fallen into disuse."

As to the bond, which you requested, my letter of the 22d of October, 1794, has told you that the Executive could not dictate it to the judiciary. Nor was it necessary, since the damages, which might be adjudged to the captors, are always sufficiently secure under the usages of the courts. The instruction, however, to the governours also on the 22d of October, 1794, render a double recourse both to the Executive and judiciary not easily practicable.

The previous inquiry by the Executive which you have suggested, could only contribute to delay. For, if the President were even to decide, that a prize ought not to be prosecuted in our courts, the decision would be treated as an intrusion by those courts, and the judicial proceedings would go on notwithstanding. So speak the constitution and the law.

I have never entertained any other "theory" of our admiralty courts being uncontrollable, than this; that they are entirely independent of Executive mandates: that their decrees are not to be questioned by foreign nations within the principles, which I have quoted under the first division of this letter: and that the treaty with France checks them in regard to prizes, only after it has been established, that what is claimed as a prize, *is* a prize, and not plunder from our own citizens, or other neutrals. Permit me here to observe, that you have misconceived me, when you suppose that "all the armed vessels of your nation, which have brought prizes into the United States" are viewed by me as pirates: very far was this aspersion from my intention. Be pleased to revise my expression. If you shall be satisfied, that from haste or other cause you

have misunderstood me, you will cancel the impression, which you have received. If you should not be satisfied of your mistake, I will not dispute about words, but will cut short the debate by disavowing any such sentiment. I meant to stigmatize those French cruisers only, who captured the property of ourselves or of other people, not associated in the war.

Fifth, Although it may be seriously apprehended, that a diplomatic intercourse, which shall be occupied in calculating fractions of time and canvassing single words, may dwindle below its proper standard, yet will I once more run over the minutiae of the *Terpsichore*, and of her prize *la Montagne* and of *l'Esperance*.

The first circumstance of official sloth, which has been attributed to the governour of Virginia, is his omission to answer the vice consul's letter of the 31st August, 1794, until the 12th of September following. When the vice consul's letter was despatched, when it arrived at the seat of government, how it was addressed, so as to be opened by any other person in case of the governour's absence, appears no where. Nor is it material, for by *accident*, not by design, the governour was not on the spot when it reached Richmond.

The second testimony of reluctance in that governour is, that on the 25th of September, two other English frigates entered Hampton with two French prizes; and the same day the vice consul sent a new complaint to the executive of Virginia. You have yourself furnished good grounds to suspect that this letter never attained its destination. However, sir, if you hold this to be important, I request you to specify the names of those frigates, and every other circumstance belonging to their stay in our waters, that I may investigate the cases.

Thirdly, You insist, that the governour ought on the 12th of September to have given *orders* to the officers, whom it concerned. It is not improbable, that the very apology, which you offer, for the silence of the agents of France on a part of the executive rules of 1793, may have prevented the subject from coming fully into the governour's mind at the instant "That the English had not before had a maritime force upon our coast." Perhaps it might have been considered, as requiring no small share of circumspection to drive from our rivers the publick

ships of a foreign nation. Had the governour of Virginia been situated as some other governours are, he might have issued an order for the departure of the capturing vessel, immediately on her arrival. As it was, he might well have been backward, until he should have been driven by necessity to depute others upon such an occasion. But be this as it may, the circular letter from this department on the 10th of October, 1794, is demonstrative of the sincerity of the federal Executive, in providing for the emergency, as it arises. Where then, I again demand, do you find traces of British predilection in these measures? Not, sir, in trailing the consuls on, as you represent by ostensible correspondences which cover nothing but inertness (*lenteurs*) nor yet in the want of satisfactory instructions; which were not delayed more than twenty-eight days upon an extreme computation, and much less upon an accurate one; and from the postponing of which the examples of injury have been few, very few indeed; and only I believe in one state, whose executive resides at a distance from the seaboard.

Fourthly. The governour's letter on the 22d of August and 5th of December, 1793, to the commandants of counties are exhibited as a mark of rancour against the French Republick. You arraign that of August 22d, "because in speaking of prizes, which might be suspected of having been made by vessels armed and equipped in the ports of the United States, he says, what did not apply to any but French vessels." Consult his own language. "It having been decided by the President of the United States, that no armed vessel, which has been or shall be originally fitted out, in any port of the United States, as a cruiser or privateer, by either of the parties at war, is to have asylum in any of the ports of the United States: in case any vessel within the foregoing description, should arrive in any port or harbour, within the limits of your county, you are to cause her to be ordered to depart immediately, and in case of her refusal, you are to take effectual measures to oblige her to depart. Force is not to be resorted to, until every proper effort has been previously made to procure the early departure without it. If any such vessel or vessels shall have sent or brought subsequent to the fifth instant, or should hereafter send or bring any prize or prizes into any port or harbour within

your county, you will cause such prize or prizes to be immediately secured by your militia, for the purpose of being restored to the former owners." The interdict of fitting out cruisers in our ports comprehended all the belligerent parties, and a letter from this department to Mr. Genet on the 23d of June, 1793, shows, that it had operated upon an English privateer, armed in Georgia. It would have operated equally upon English prizes, if it had not been for the exclusion, stipulated by treaty in favour of France of all prizes but those of the French. Were the treaty out of the way, so that prizes, made by the English, might enter our harbours; the governour's order would involve them in its scope, and would arrest them also, if captured by an illicit privateer.

The letter of the 5th of December, orders the commandants, that "*in case* they should take possession of any vessel *upon an allegation* of her having been captured within three miles and a half of our seashore, or within our rivers or bays, they will be pleased to certify the same to the governour, that he may direct the manner, in which the witnesses shall be examined." You have interpreted this letter into "an additional order to cause to be seized the prizes which might be *even alleged* to have been made" within that distance. This order does not require that the officers *shall* seize upon *any* allegation, but delineates a particular step, in case they should seize; when they were to seize *upon an allegation*, was an affair of discretion with them. That discretion, like the discretion of every publick officer, was to be regulated by a reasonable degree of evidence. Truly, sir, I should counteract my own knowledge of the strength of your judgment, were I to detain you by the expositions, which so copiously present themselves. It is enough to ask, if it be possible, that the governour of a state, designated to preserve our neutrality, would ever suffer vessels to be torn from the French captors, upon the naked declaration of a British proprietor, that they were taken within our jurisdiction? Has it ever been done? Your answers and mine cannot I am persuaded, be widely variant from each other.

The observations, which you have been pleased to communicate to me, on the subject of l'Esperance, have not shed those lights which I wished. Perhaps I was entitled to expect a more ample elucidation; since you per-

sist in your answers, and since the evasion of the captain, the mitigating expressions of the French vice consul, and the equivocal footing of Butler's affidavit, utterly deprive us of the means of information. Mr. Hammond has indeed forwarded to me a letter from admiral Murray, an extract of which refers to the capture of this corvette, "The French sloop of war *l'Esperance* was brought into Lynn-Haven Bay on the 11th of January (a few days after my arrival there) by captain Ball who had captured her 15 leagues from the shore ; the weather being very tempestuous, a lieutenant with a sufficient number of men only to navigate her (not being half the complement the French had in her) were sent on board from the *Resolution* and *Argonaut*, and so soon as the weather permitted those ships to supply her with water and provisions, I sent her to sea, that I might give no umbrage to the American States ; an additional reason for bringing *l'Esperance* into Lynn-Haven Bay was out of humanity to the French prisoners, whom, having had a long voyage, I sent to Norfolk, as soon as prudence would permit : otherwise they must have been kept prisoners on board the whole winter, and sent to Halifax in the spring, nor was she equipped or armed then in any manner whatever, nor did the lieutenant receive any commission for her whilst in Lynn-Haven Bay, and when at sea, only an acting order to command her, which is customary and absolutely necessary in all captures, otherwise, if retaken by the enemy, he might be considered as a pirate." Mr. Murray's letter recommends at least, that a full inquiry be made ; and without your aid, I do not as yet discover any certain resort for an explanation of this affair.

Sixth, You remonstrated on the 23d of September, 1794, on the search and treatment of the *Favourite*, and on the 25th I wrote to you the following letter. "I regret extremely, that any citizen of the United States, and more especially if he be in authority, should offer either outrage or insult to a vessel of the French Republick. I have accordingly written to the attorney of the district of New York, to inquire into and report the facts, as you will perceive from the enclosed copy. The course might have been shortened by directing to proceed in the case, as the law directs. But this has not been adopted ; because we wish to reserve to ourselves the decision in this particular ;

as it is suggested that a publick officer is concerned, and we take an interest in causing justice to be done to the French Republick, as far as possible, under our own eye." On the 22d of October, the day after I had received the documents from the district attorney of New York, I enclosed them to you; and on the 17th of November, 1794, this business was concluded, as I imagined, in the following letter to you. "The Executive of the United States being obliged to collect information of facts, at a distance, through the publick officers, and having a confidence in them, it was conceived sufficient, in the first instance, merely to transmit to you the evidence which had been obtained respecting the Favourite. Hence in the letter, which I had the honour of writing to you on the 22d ult. I did no more than note the enclosures; reserving any reflections until I should be ascertained on your part, whether the allegations were true."

"The opinion which the President has formed, relieves both you and myself of no small difficulty in comparing and weighing the testimony.

"He has thought proper to instruct me to inform you, that on the faith, which he always reposes in your assertions, he takes these points for granted: that the Favourite is a publick vessel of war, bearing the commission of the French Republick: and that no contravention of the act prohibiting the exportation of military stores was meditated, in the application of those which were found on board.

"The President highly disapproves, that a publick vessel of war, belonging to a foreign nation, should be searched by officers of the customs, upon a suspicion of illicit commerce. The propriety of representing such a suspicion to the consul of that nation, or the commander of the vessel, will not be controverted; this being a course respectful and customary. A general instruction will be therefore given to pursue this course, with the view that if it should be ineffectual, the government of the United States may adopt those measures which the necessity of the case and their rights may require.

"A particular instruction, founded on the same principles, will be also forwarded to the collector of New York; with this addition, to discontinue the prosecution against the property, and restore what may be within his power or command. At the same time, I must repeat the assur-

ance, which we entertain, that you will prevent the stores from being used in any manner, contrary to the act before referred to.

“ I flatter myself, sir, that this reparation of what is past, and the precaution against the future, will manifest such a disposition in our government, as will induce you to approve the decision which a sense of justice imposes upon the President to wave any further measures. For the appearance and circumstances of the Favourite might have misled the best intentioned men into a misapprehension of her real character. And in truth, something is due to the consideration, that in our new situation it cannot be expected, that all our officers should meet every occurrence with a correct knowledge of the usages of nations.”

“ An insult to the French flag will not be tolerated by the President, whensoever he can prevent or punish it. But the depositions do not place this subject in so clear a light, as to prove its existence, or designate the culpable person. It is the President's purpose therefore to cause the officers of the customs to be admonished to respect your flag ; and if this be not satisfactory, and you are still persuaded that an insult has been committed, I shall be ready to concur in any arrangement which may be convenient, for the full examination of such other witnesses as may be produced.”

Being unable to add any other vindication in regard to the Favourite ; and not being informed of the vessel going to Guadaloupe, and said to have been arrested at Norfolk, on suspicion of infringing our neutrality ; nor yet, how it supports the complaint relative to the Favourite, I leave the subject here. But let the vessel destined to Guadaloupe, be in any predicament whatsoever, the countermanding of the orders given by the governour of Virginia to the militia officers of Norfolk, to refuse comfort to British vessels, using our waters as a station, cannot be tortured into any connection with her. For the act of the President never authorized the state executives to issue such an order : no other executive misunderstood it : the executive of Virginia revoked in a week before the revocation was heard of by the federal Executive, and you may determine from my correspondence with Mr. Hammond, on this subject, what the President finally contemplated.

Upon this point a few words will be sufficient. Of the reaction towards Great Britain, and of the reparation towards ourselves, the United States are the only legitimate judges. They will adapt the one and the other to their estimate of their own power and interest. Being the defenders of their own honour and welfare, they will not be suspected of voluntarily abandoning either; and if they do not mount to the pitch which the French Republick would prefer, their good will and intentions towards it ought not to be doubted. What you call, sir, lukewarmth to our ancient ally, is an upright neutrality. The new arrangements against which you have expressed yourself, are a part of the great subject, which is now at the disposal of the Senate.

There are some miscellaneous matters, which remain to be touched briefly.

We agree to submit the construction of the 17th article of the treaty to explanations between the two governments. But in the mean time I must own, that I do not feel the importance of Mr. Hammond's acknowledgment to your reasoning. He had contended, that under our treaty with France, we could not expel the *prizes* made by the British cruisers. I had insisted upon our right to drive them off, and by way of argument reminded him of a construction, which we had adopted respecting the cruisers themselves, and which by his *literal* exposition would be defeated. You do not seem to be aware of the dilemma to which this mode of reasoning exposes you. If Mr. Hammond be correct, then are your complaints against the admission of prizes, and our anxiety to prevent it, wholly unfounded: and our harbours may swarm with them. If he be incorrect, the concession amounts to nothing. Between us it surely is of no avail, whether a British minister reasons well or ill; though I do not recollect, that he has repeated this branch of his position, since he has been apprized of its tendency. Wheresoever truth lies, it is our duty to follow; and I rest our construction upon this frank principle: that notwithstanding the *letter* of the treaty; its spirit—its context, and the rules of interpretation, will uphold the regulations of our government.

In a procedure, like this, it will not be easy to find a leaning, or subserviency to Great Britain. It is a leaning and subserviency to the character of our nation. Your

letter strongly demonstrates the propriety of my remark, that a neutral nation, while it defends itself against charges from one of the warring powers, may seem to palliate the misdoings of another. But we surely ought to have been exempt from this reflection ; as you are particularly desired not to infer from my justification of the Executive that the validity of the proclamation of blockade is assented to ; as you admit " That we are indignant at the injuries which Great Britain has done us ;" and as we have employed no argument which is not derived from national law. Until you shall permit yourself to be more specifick in your accusations we cannot surrender the consciousness of our political purity.

It is with real regret, that I read in your last letter an idea, that we have not done justice to your proclamation, to your displeasure at the crew of the *Concorde*, and to your general conduct towards our government. How much more is that regret increased, when any of my expressions can be wrought into an attempt to inspire you with fear, or to deter you by personal considerations from the discharge of your duty. A respect to ourselves, would forbid such an attempt ; a respect for you would forbid it ; having no possible object, distinct from the interest of the United States, we are incapable of it ; being confident in our power to frustrate any encroachments, we can never intend to plant in your breast so unworthy a motive. As you again disclaim an approbation of Mr. Genet's excesses ; so am I not scrupulous to confess that I should not have recurred to them, had I not inferred from your letter an inclination to bring them up with some share of countenance to them.—But this being as you inform me, the moment of our *official* separation, I am compelled by candour to *intimate* to you, what, under other circumstances, would have been stated to you more formally and minutely. The citizens of the United States have a right, and will exercise the right, freely to investigate the measures of government.

A foreign minister has a right to remonstrate *with the Executive* to whom he is accredited, upon any of those measures affecting his country. But it will ever be denied as a right of a foreign minister, that he should endeavour, by an address to the people, oral or written, to forestall a depending measure, or to defeat one, which has been decided. This remark is made *now* ; because it cannot be

erroneously wrested into a defence or outwork of the treaty with Great Britain; and because it is an assertion of the sovereignty of the United States, consistent with what is past, and we trust not likely to be contradicted hereafter.

I cannot conclude this letter without offering to you my sincere wishes for your happiness, and a personal assurance of the great respect and esteem, with which I have the honour to be, &c.

EDM. RANDOLPH.

No. 69.

Mr. Randolph, Secretary of State, to Mr. Harrison, District Attorney of New York. Department of State, July 30, 1795.

SIR,—I must beg the favour of you to inform me, for what cause a libel has been filed against the French privateer *La Vengeance*, and her Spanish prize. As many particulars, as you can conveniently give me, will be acceptable, Mr. Adet being very urgent in his complaint of the arrest. I will thank you to add, what previous examination, or rather what degree of evidence usually precedes an order for arresting vessels in the situation of the foregoing. Your answer by the earliest moment will greatly oblige me. I have the honour to be, &c.

EDM. RANDOLPH.

No. 70.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 15th Thermidor, 3d year of the French Republic, one and indivisible. (Aug. 2, 1795.)

SIR,—Among other documents which I have received from citizen Berard, captain of the privateer *La Vengeance*, and all of which incontestibly prove, that his vessel was not armed on this continent, there is one, of which I send you a copy.

This is a copy of the information of the district attorney of New York, upon which the seizure of the ship *La Vengeance* was grounded, accompanied by a certificate of the clerk of the court who attests, that no affidavit, no proof was produced in support of this information.

Since I had the honour to write to you on this affair, an offer has been made to captain Berard to release his vessel upon giving security. He refused; and persists in claiming the removal of the seizure without any condition, and with a reservation of his right to damages and interest. Justice supports his claim. In fact what signifies security? will it atone for the infraction of treaties, if it is proved by the decree, that the privateer was armed on the continent?

I repeat the request which I have already made to you to remove the seizure which has been made of citizen Berard's vessel. Permit me to remark to you, that a longer detention will considerably increase the indemnity he claims; and it will occasion unnecessary expense when a decree shall be pronounced on the merits of the business.

The vouchers which have been communicated to me establish the fact in so clear a manner, that I have not the least doubt as to the issue of the suit instituted between the captor and the prizes, notwithstanding the employment in the defence of this bad cause, *of the English expedient, subornation.*

I have in my hands a convincing proof of this last fact. Accept, sir, &c.

P. A. ADET.

No. 71.

NEW YORK, SS.

District Court of the United States of America, for the New York District.

BE it remembered, that Richard Harrison, attorney of the United States of America for the New York district, who prosecutes for the said United States, being present here in the court, the eleventh day of July, in the year of our Lord one thousand seven hundred and ninety-five, in his proper person, doth, on behalf of the said United

States, inform the court, that between the sixth day of June in the year of our Lord one thousand seven hundred and ninety-four, and the time of exhibiting this information, Aquila Giles, Esq. marshal of the district of New York, did at the city of New York, in the New York district, seize to the use of the said United States as forfeited a certain schooner or vessel called *La Vengeance*, her tackle, apparel and furniture, together with four swivels and ten carriage guns mounted on board of the said schooner, being of the goods and chattels of some person or persons to the said attorney unknown, for that the said schooner or vessel after the said sixth day of June, in the year of our Lord one thousand seven hundred and ninety-four, and between the said day and the time of exhibiting this information, was fitted out and armed within some, or one of the ports, harbours, bays, rivers or other waters of the said United States, to wit, at the city of New York in the New York district, with intent that the said schooner or vessel should be employed in the service of a foreign state—to wit—of the Republick of France, to cruise upon the subjects of the king of Spain, the said king being then and now at peace with the said United States, and that the said four swivels and ten carriage guns were between the said time procured at the place aforesaid for the equipment of the said schooner with the intent aforesaid—contrary to the form of the statute in such case made and provided. By reason whereof, the said schooner or vessel, her tackle, apparel and furniture and the said swivels and carriage guns have become forfeited. Whereof the said attorney for the said United States prays the judgment of the court in the premises—and that the said schooner *La Vengeance*, her tackle, apparel and furniture and the said swivels and carriage guns, may for the reason aforesaid remain forfeited according to the form of the said statute.

HARRISON, Attorney U. S.
for the New York District.

ROBERT TROUP, Clerk.

I do hereby certify, that the foregoing is a true copy of the original information filed in my office; and I do

further certify that no affidavit or proof has been filed in the said office to certify the allegations in the said information contained.

ROBERT TROUP, Clerk of the District.
Copy, P. A. ADET.

No. 72.

Mr. Randolph, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, August 11, 1795.

SIR,—Since my last letter to you respecting the privateer La Vengeance and her prize, the enclosed papers have been transcribed ; and I avail myself of the earliest moment to forward them.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 73.

Mr. Troup, Clerk of the District Court of New York, to Mr. Randolph, Secretary of State. New York, August 7, 1795.

SIR,—In the absence of Mr. Harrison, who is attending our supreme court at Albany, Mr. Ludlow has put into my hands your letter of the 30th ult. to Mr. Harrison, on the subject of the suits depending against the French privateer La Vengeance and her Spanish prize.

On the 2d ult. a libel was filed on the admiralty side of the district court of the United States for this district, in behalf of Don Diego Pintado a subject of the king of Spain, against the ship San Joseph alias La Princessa de Asturias, her tackle, apparel, furniture and appurtenances, and the cargo on board of her. A copy of the libel is enclosed. On the filing of this libel the usual process was issued to the marshal, in virtue of which he took the ship into custody, together with her cargo. On the 13th ult. citizen Jean Antoine Berard, as the captain of the French privateer La Vengeance, filed his answer and claim in the suit so instituted in behalf of Don Diego Pintado, a copy of which answer and claim is also enclosed.

The suit was instituted upon the official application of the Spanish consul for this state; and it originated from copies of official letters which had passed in the course of last spring between several of the revenue officers in the port of Philadelphia, and also between one of these officers and the governour of the state of Pennsylvania. From these letters and other information received by the Spanish consul, there was strong reason to apprehend that the French privateer had been fitted out and armed within the United States, with intent to cruise or commit hostilities upon the subjects of the king of Spain, and their property; and if this were the fact, the legal inference drawn from it was, that the forcible detention of the Spanish ship and her cargo by the French privateer in this port was illegal; and consequently, that the subject of the king of Spain was entitled to the aid of the courts of the United States, to compel a restoration of his property. Upon the filing of the libel in question, it was not necessary by the course of proceeding in courts of admiralty, or by any law of the United States, or by any law or usage of this state, that the libel should be accompanied by any affidavit or evidence whatsoever to verify the allegations contained in it. The libellant has instituted his suit, as in all similar cases, at the peril of paying costs and adequate damages to the claimant, in case the final decree in the suit should be against the libellant. For the payment of these costs and damages, security to the satisfaction of the claimant has been taken. The suit has been at issue for some days past, and divers witnesses have been examined on both sides. On the part of the libellant it has been testified in substance, That the privateer in question is a very fast sailer, and was pierced for fourteen guns, that she had six ports on each side open, and one port on each side shut. That the privateer being in the port of Philadelphia in the month of March last, (under the character of a merchantman) appearances manifested an intention of fitting her out as a privateer. These appearances were communicated to the surveyor of the port, who caused her to be closely observed. That it was discovered that the two ports that were shut, had been opened and hinges put on them. That irons were fixed on her bow for swivels, that she had a great number of water casks in her hold, and a very large caboose on

board of her. That the water casks were too numerous, and the caboose too large for the accommodation of such a vessel on a common trading voyage. That she had changed her captain, from an American to a Frenchman. That her military equipments were reduced by the interference of the government. That the said caboose remained on board, and was alleged by the captain to be intended for the accommodation of a number of passengers. That on or about the twenty-third day of March last past the privateer, so as aforesaid reduced as to her military equipments, sailed from the port of Philadelphia, and at the distance of about thirty or forty miles below the fort, she met with a shallop lying at anchor and waiting for her. That thereupon the privateer came to, and two cannon, being three pounders, two swivels, some muskets, pistols, sabres, pikes, and some bullets (rather of a larger caliber than the cannon) were taken from the shallop and put on board the privateer. That after these equipments were thus taken on board of the privateer, she came directly round to New York, and anchored within the Hook, about the distance of two musket shots from the Hook, the day before Easter. That soon after her said arrival at the Hook, she was visited by captain Dennis of the Revenue Cutter, who asked what vessel she was, and from whence she had come. The answer, received through one Wilson was, that she had come from Guadaloupe. Upon which captain Dennis further asked, what passage she had had? The reply was fifteen or sixteen days. Captain Dennis then repeatedly desired to see the papers of the privateer, but they were constantly refused, upon the pretext that the privateer was upon a secret mission which could be communicated only to the French consul. That upon this the pilot who had brought the privateer from below the fort above mentioned, said, that the privateer had been chased into the Hook by three English vessels. That she was in the Hook only for shelter, and that she wanted nothing. That captain Dennis hereupon offered the captain of the privateer a passage in the Revenue Cutter to the city of New York, which was refused. That thereupon capt. Dennis left the privateer. That whilst capt. Dennis was on board of the privateer one Rostan was made use of as the captain of her, whilst her real captain was Jean Antoine Berard.

That on the very day capt. Dennis left the privateer, capt. Berard went to the city of New York, and in the course of three or four days afterwards a boat came down to the privateer so at anchor within the Hook with forty-eight chests of gunpowder, each chest weighing about one hundred and fifty pounds. That these chests of powder were put on board of the privateer, and soon afterwards capt. Berard returned with some seamen, and the privateer set sail for Port de Paix, where she arrived and delivered forty-five of the chests of gunpowder to general Laveaux. That soon after capt. Dennis had left the privateer as aforesaid, she mounted the cannon on board of her, and they continued mounted after her arrival at Port de Paix. That when the privateer left Philadelphia she had about thirty men on board who were all sailors or volunteers belonging to the privateer as is believed. That at Port de Paix the privateer was careened and her bottom tallowed, and she took in four pieces of cannon (being four pounders) some fresh biscuit, and some mulattoes and blacks to replace some seamen who had deserted; and captain Berard there also received a privateer's commission from general Laveaux. That from Port de Paix the privateer went to the Cape, and from thence on a cruise, and in the course of three days cruising she took the prize in question.

The above are some of the matters testified on the part of the libellant, but the examinations on either side are not yet closed, and what will be the nature of the testimony hereafter given it is impossible to say. All the despatch will be given to the cause which circumstances admit of. Subpoenas are now on their way to Philadelphia to be served on several witnesses residing there and whose attendance is required in this city on the 14th instant.

It will naturally occur to you, sir, that two questions will arise in the cause—1st. Was the privateer fitted out and armed within the United States? If she were, ought the court to decree a restoration of the property to the libellant? These are questions now *sub judice*, and I presume it would be improper in me even to hazard a conjecture upon them. As to the suit against the privateer, it was commenced by Mr. Harrison as attorney for the district, upon an official disclosure to him by the Spanish

consul of the evidence which led him to suppose the privateer had been fitted out and armed within the United States. Mr. Harrison upon receiving this disclosure felt himself called upon by considerations which, as a publick officer, he could not resist, to proceed against the privateer under the third section of the act of Congress, entitled An act in addition to the act for the punishment of certain crimes against the United States, passed June 5th, 1794. This section works a forfeiture of the privateer, one half to the use of any person who shall give information of the offence, and the other half to the use of the United States. No person having appeared in quality of informer to institute the suit, Mr. Harrison, according to the course of the common law, filed an information in behalf of the United States solely against the privateer, as you will perceive by the copy of the information already transmitted to you. No law of the United States, and no law or usage of this state required the information to be founded upon any previous affidavit or evidence of the truth of the matter alleged in it. The filing of an information is an act entirely in the discretion of the officer entrusted by law with the power of doing it; and if he should abuse his power, he stands upon the footing of all publick officers who are guilty of malversation in office. In the present instance, Mr. Harrison has acted from the best of his judgment upon the duty of his office, after officially obtaining information from a publick officer who conceived himself likewise bound by a sense of duty to communicate the information. The suit against the privateer is also at issue, and nearly the same testimony which is above stated has already been taken in it; and further testimony, to put it on the same footing with the suit against the prize, will be procured without delay. The final issue of the suit against the privateer is altogether a problem; but I have no doubt that at least probable cause will appear to justify her seizure and detention.

If any further information should be wanted, I will furnish it as soon as I am favoured with your commands. In the mean time I have the honour to be, in behalf of Mr. Harrison, sir, &c.

ROBERT TROUP.

No. 74.

Extract of a Letter from Richard Harrison, District Attorney of New York, to the Secretary of State, dated August 13, 1795.

“WITH respect to the suit instituted against the French privateer *La Vengeance*, I have to refer you to colonel Troup’s letter of the 7th instant, with this single addition, that as the suit was commenced on behalf of the United States, from motives of duty, upon such evidence as (if unimpeached) would afford not only probable cause for seizure, but just ground for condemnation; so it will immediately be discontinued, from the same motives, if it shall be found that the weight of testimony is in favour of the claimant.”

No. 75.

TRANSLATION.

The Minister Plenipotentiary of the French Republic near the United States, to Mr. Pickering, Secretary of the Department of War of the United States, charged with the Department of State. Philadelphia, the 3d Vendemiaire, 4th year of the French Republic, one and indivisible, (Sept. 24, 1795, O. S.)

SIR,—I have duly received Mr. Randolph’s letter of the 11th August, in which he enclosed copies of that written from New York on the subject of the privateer *la Vengeance*, and of the documents produced at the suit pending in the district court of that city against the privateer and her prize.

My objections are still the same, and I should have renewed my representations, if the weak replies I received had not led me to imagine, that I had little to hope from such a step. I therefore thought it my duty to wait until I should be possessed of authentick documents to discuss at the same time, the points of right, and fact.

These documents have come to hand.

I begin with the point of right.

The prize made by the privateer *Vengeance* of a Spanish ship, is arrested upon the allegation of the consul of that nation, stating that this privateer had been armed in the United States.

Upon this simple allegation, without an affidavit or other testimony, the attorney of the district had the privateer arrested. He pretends that affidavits are not necessary, and that if the decree should be favourable to the privateer, the damages accruing from her arrestation shall be borne by the plaintiff.—Besides he undertakes to assert that the prize cannot escape condemnation.

It is not my province to dispute the responsibility for the damages and interest resulting from the arrest of the privateer, which is a matter foreign to the subject of the prize, and a punishment for a supposed violation of your neutrality.—Therefore I shall not discuss this part of the allegations of Mr. Attorney which appears to me erroneous; it is not doubted that in the final issue, the French privateer will have a right to claim damage and interest from the American government.

But I again recur to the assertion, that an affidavit is not necessary for ordering the arrest of a vessel.

What is the law, what is the usage, which establishes the prosecution for reparation of an offence, before it be ascertained that it has been committed; and what certainty then had Mr. Attorney? His opinion. Upon what is it founded? The complaint of the Spanish agent, since there was not a single affidavit.

Now, sir, upon mere suspicions which the enemy interest will not fail always to bring forward, the French privateers are to be subjected to seizure! Such a measure tends to nothing less than to paralyze the 17th article of our treaty.

Doubtless, sir, this is not the intention of your government. No, the United States under the veil of friendship would not endeavour by indirect means to abuse the advantages of an alliance cemented by French blood.

I therefore protest against this illegal arrest—I request you, sir, to examine into the irregularity of it, and to order its removal.

You may do this as it was the act of an agent of the executive power with the courts, and not that of the judiciary.

I return to the point of fact—that is to say, to the arming of the privateer in the United States. Like Mr. Attorney I had my conviction, it was only a moral, but it is now a physical one—among the numerous written documents which have come to my hands, I confine myself to the choice of four; of these I transmit you copies.

The first is the declaration of general Laveaux, stating that the vessel called *la Dorade*, arrived at Port de Paix, without any armament whatever, that she was sold to citizen Jacques Rouge, armed by him as a privateer, partly at that place and partly at the Cape. This declaration is certified by the municipality of Port de Paix.

The second is, a declaration of citizen Villatte, commandant at the Cape, stating that this privateer sailed from that place with six cannon.

The third is, the bill of sale of *la Dorade*, done at Port de Paix the 24th last Floreal, with an exact and minute inventory of every thing belonging to the vessel.

The fourth and last is, a declaration of the master warden of the port of Philadelphia, proving that this vessel sailed without an augmentation of force.

The reading of these papers will convince you, sir, that Mr. Attorney was not founded in the opinion which he looked upon as a sufficient reason for authorizing and justifying the seizure against which I complain.

As though this seizure were insufficient, Mr. Attorney, upon what foundation I know not (probably also according to his opinion) has ordered a second seizure of the vessel under the pretext that she exported arms and ammunition from the United States. I do not discuss also, sir, this difficulty superfluous in the main, but I complain of a step which is a formal insult, an outrage against the French Republick and myself as its representative.

The first point of difficulty was in discussion; I complained; a negotiation was opened between you and me; and this is the time Mr. Attorney chose to repeat the very thing about which I was complaining. He has violated usage and decency in the most wanton manner, since admitting the second seizure to be well founded. it was use-

less for securing the penalty as long as the first had not been removed.

I request justice, sir, and I am so much the more persuaded that you will readily render it to me, as you will be perfectly convinced, that this is considerably less a question of the particular interest of the privateer, than of maintaining the principles of the alliance and the rights of the French Republick; for which you have repeated to me assurances of attachment which leave me no doubt of your dispositions.

Accept, sir, &c.

P. A. ADET.

No. 76.

The French Republick. Etienne Laveaux, Commander in Chief of the French Windward Islands in America.

At the request of the owners and captain of the ship *la Vengeance* formerly *la Dorade* to certify all the facts and circumstances known to us relative to this vessel,

We rendering homage to the truth, declare that on the 13 Floreal last (2 May, O. S.) the vessel called *la Vengeance* formerly *la Dorade* anchored in the road of Port de Paix about eight or nine o'clock in the morning; that immediately the captain, named Francis Michel, was brought before us as is customary, and in presence of part of the army declared that he had been charged by the agents of the French Republick near the United States, with a secret mission, of which he perfectly acquitted himself. This I do not conceive my duty to detail here. The vessel arrived as a merchant vessel, without either cannon or musket of any kind, and but slightly manned.

This mission being fulfilled, *Francis Michel*, attorney of John Baron, owner of the said vessel, sold her to citizen Jacques Rouge of this town, agreeably to a bill of sale executed before Dominigeaux and his partner, Notaries at Port de Paix, the 24 last Floreal.

The citizen Jacques Rouge having chosen Jean Antoine Berard to command this vessel, requested letters patent from me to arm her as a privateer. I granted them on the 27th of last Floreal, and they were registered in the re-

cords of the admiralty of this town and in the office of the civil ordonnateur.

Cannon being of great consequence for the defence of this town, citizen Berard could find very few. He asked me for 3 three pounders which were in one of our forts ; I promised them to him, but having been obliged to erect a battery which was indispensable, I was under the necessity of omitting to fulfil it. He then requested permission to go to *Borgne* for others : I could not permit him on account of the utility of the artillery there. In a word, he found at Port de Paix but two cannon, three at *Coulevrine* which he purchased with my permission, of citizen Florestal, an inhabitant of that town.

Under these circumstances, citizen Berard went to the Cape to complete his armament. As I could not after what had been done for the Republick, refuse to accelerate the arming of this vessel, I wrote to Vilatte commandant at the Cape to render him assistance.

All the facts above related are perfectly true. It is a matter of publick notoriety that *la Vengeance* arrived here a commercial vessel ; that she was sold to Rouge a citizen of Port de Paix ; that he obtained a commission for cruising against the enemies of the Republick ; that she was commanded by Jean Antoine Berard ; that her armament begun here under my own eyes ; that it was completed at the Cape in virtue of my letter to the commandant ; that he sailed thence on a cruise against the enemies of the Republick : therefore the prize made by the said Berard being by a privateer legally armed and agreeable to the laws of the French Republick one and indivisible, cannot be contested.

In faith whereof we have delivered the present declaration to serve and avail when and where it ought.

Given at Port de Paix, under the seal of the Republick, and countersigned by our secretary, the
[L. s.] 1st Fructidor, 3d year of the French Republick,
one and indivisible.

By the commander in chief,

ET. LAVEAUX.
HENNIGIN,

First aid-de-camp and secretary.

We the mayor and municipal officers of the town and parish of Port de Paix, island of St. Domingo, certify to

all whom it may concern, that the citizen Et Laveaux is commander in chief of the French windward islands in America, that faith should be given to his signature above, as well in as out of judgment.

In faith whereof we have delivered these presents, signed with our hand, and sealed with the seal of the municipality.

Given at Port de Paix, at the town house, 2d Fructidor, 3d year of the French Republick, one and indivisible.

[L. s.]

Domingeaux, A. Notary.

Derbodes, Mayor.

Burtarret, Notary.

La Coste, Notary.

Ricard, Notary.

Bern Barthe, A. Secretary.

True copy.

P. A. ADET.

No. 77.

Cape, 28 Thermidor, 3d year of the Republick.

I, VILATTE, commander in chief of the town of the Cape and its dependencies,

Certify that the schooner *La Vengeance*, of Port de Paix, captain Berard, entered this road the 1st Prairial last, with two cannon and sailed thence on the 5th of the same month with 6 cannon, to cruise against the enemies of the Republick. Annexed hereto is a letter of recommendation from general Laveaux to this effect to protect his armament.

VILATTE.

Port de Paix, 23 Floreal, 3d year of the French Republick, one and indivisible.

ETIENNE LAVEAUX, commander in chief, to Vilatte, colonel of the 1st regiment, principal commandant at the Cape.

The citizen Jean Antoine Berard, captain of the privateer *La Vengeance*, goes to thy port—I recommend him to thee as a good and virtuous citizen patriot.

The citizen Barriere has taken five of his crew from him; thou wilt permit him to replace them from Barriere's two vessels.

In case citizen Berard should want two cannon, thou wilt deliver them to him, in case they can be spared, on his paying the treasurer their value. Salut.

ET. LAVEAUX.

Certified to be a sincere and true copy from general Laveaux. Cape, 28 Thermidor, 3d year of the French Republick, one and indivisible.

VILATTE.

We, the mayor and municipal officers of the town and jurisdiction of Cape Francois, certify and attest to whom it may concern, that citizen Vilatte, who signed the above, is colonel of the 1st regiment and principal commandant of the town of the Cape and its dependencies, and that faith should be given to his signature, as well in as out of judgment.

In testimony whereof, we have signed these presents, and thereto affixed the seal of the municipality of this town.

Henry, Mayor.

Dampaire, M. Officer.

Puech, A. N.

Silvester Forbes, Mun. Officer.

Fougiers, S. G. Ad.

Chavance, Mun. Officer.

True copy.

P. A. ADET.

No. 78.

24th Floreal, 3d year. sale of the schooner la Dorade, by Francis Michel to Jacques Rouge.

BEFORE the undersigned notaries of the French Republick, in the jurisdiction of Port de Paix, island and coast St. Domingo therein residing, appeared Francis Michel, captain of the schooner *la Dorade*, now anchored in this road;

Who by these presents, in the name and as attorney of Baron (the power of attorney having been shown to us) declares to have voluntary sold, quit claimed, ceded, abandoned, and transferred, from this time and for ever, promising hereby to warrant the same both in law and fact, to Jacques Rouge, merchant at the Cape, now in this town, for himself, his heirs and assigns, the said schooner *la Dorade*, of the burden of about 50 tons, together with her boat, tackle, apparel, cables, anchors, appurtenances, and every thing thereunto belonging, without exception or reservation, which the said purchaser declared himself well acquainted with, and such as is designated in the inventory formed and executed by the said parties, signed and marked by them and the said notaries, which is annexed to these presents.

The present sale being thus made for and in consideration of the price and sum of 66,000 livres deniers, which sum of 66,000 livres the said Francis Michel acknowledges to have received, before these presents, from the said Jacques Rouge, in money and colonial produce, furnished by the said Rouge for completing the said sum of 66,000 livres, wherefore the said Francis Michel perfectly exonerates the said Rouge from the price of the said schooner *la Dorade*.

The said Francis Michel disseizing himself in the name of the said Baron of the ownership and possession of the said schooner *la Dorade*, in favour of the said Rouge, so that the latter may use and dispose of her from this day as a thing to him appertaining, by means of these presents, the said Rouge hereby acknowledging himself in possession of the said schooner, and as being therewith contented, because he has seen, visited and examined, for that, &c. promising, &c. obliging, &c. an act thereof.

Done and passed at Port de Paix, in our chambers, the 24th Floreal, 3d year of the French Republick, one and indivisible, and after reading the same to the said Francis Michel and Jacques Rouge.

Bressat, Notary.

Domingeaux, Notary, and keeper
of the said minute.

The following is the tenour of the annexed paper :

Inventory of the schooner *la Dorade*, captain Francis Michel, made at Port de Paix, the 12th May, 1795, (O. S.) 3d year of the French Republick, one and indivisible.

To wit :

1 eight inch cable, one third worn, 1 eight do. half worn, 1 six do. one fourth worn, 1 three do. 1 three do. halser, half worn, 1 coil of cordage, of 24 yarns, new, 1 do. 18 do. (cut) 1 do. 9 do. 2 spare *etagnes*, 4 tackles complete, 24 spare blocks of different sizes, 1 top block, 8 marling spikes, and 4 scrapers, the running and standing rigging half worn. *Spars*—2 good lower masts, 1 bowsprit, 3 topmasts, 2 lower yards, 2 topsail yards, 1 *Boine*, 2 boom crutches, 2 royal yards, 4 studding sail yards, 1 *cangau et ses bouts de dehors*, 4 oars for the schooner, 1 yawl, 2 port anchors. 1 crow. *Sails*—2 fore sails, one third worn, to main sails, do. 2 jibs, do. 2 do. three fourths worn, 1 top sail, one third worn. 2 do. half worn, 1 flying top gallant sail, half worn. 1 *clin for* one third worn, 1 stay sail, half worn, 1 *fleche du eul*, one third worn, 4 studding sails, half worn, 1 jury sail, half worn. *Carpenter's tools*—2 saws, 2 axes. 4 augers, 1 *varpose*, 1 plane, 3 chisels, 1 gouge, 3 *mardeaux*, rasp and other small utensils. 4 sets of pump rigging, 1 pump hook. *Cooking utensils*—1 caboose, 1 small copper cauldron, 1 do. tin, 2 pans, 2 coffee pots, 2 soup ladles, 1 gridiron, 1 frying pan, 1 tin canteen, 6 glasses, 6 forks, 6 knives, 6 spoons, 1 dozen plates, 4 dishes, 1 candlestick, 1 wax do. 1 coffee mill, 14 wooden cannon, 5 cans, 6 wooden bowls, 12 iron bound hogsheads, 3 barrels, 4 buckets, 1 funnel, 1 tin pump, 2 lanterns, 1 barrel beef, broached, 1 cheese, 1 half barrel of butter, broached, 2 barrels vegetables, both do. 1 box of candles, broached, 10 quintals of biscuit, or thereabouts. *Articles belonging to the binnacle*—1 azimuth compass, 3 common compasses, 3 half hour glasses, 2 do. for the log, 1 log complete, 2 national flags, 1 American flag, 1 long *ven*, 1 binnacle, 1 copper lamp, 8 barrels *en botts*. *Provisions*—200lbs. biscuit, nearly, 1 half tierce of rice, 1 barrel peas, three-fourths of a barrel of beef, one-fourth of a barrel of corned do. about 10 lbs. of butter, one-fourth barrel of rum, one-fourth do. salted fish, one-half do. flour, three-fourths do. do.

The waist of the said vessel good, but requiring some repairs, 52 feet keel, and 65 feet from stem to stern, about 18 feet broad, 7 feet hold, having a bulk head forward and another abaft, one state room with 6 births.

Signed in the original French.

Michel. Rouge.

*Bressat and
Domingeaux,* } Notaries.

Taken from the minutes of these presents remaining in the custody of the said Domingeaux, notary.

Collated.

Bressat, Notary.

Domingeaux, Notary.

We, the mayor and municipal officers of the town and province of Port de Paix, island and coast of St. Domingo, (the controlled stamped paper and small seal not being in use) certify to all those whom it may concern, that Bressat and Domingeaux are notaries of the Republick in this district, that the above signatures by them in the said quality, are their true signatures, to which faith should be given as well in as out of court.

In faith whereof we have delivered the present, which [L. s.] we have signed and sealed with the seal of the municipality.

Given at Port de Paix, in the town house, the 21st Thermidor, 3d year of the French Republick, one and indivisible.

Desbordes, Mayor.

Vt. Richard, N.

Bintarvet, N.

Berthoumeux, C.G.

Desperbesque, N.

Thomas Dully, M. Officer.

I do hereby certify that the foregoing is a true copy of the original.

TROUP, Clerk of the District Court of
the U. States for the district of New-York.

Copy.

P. A. ADET.

No. 79.

Nath. Falconer, Esq. to Alex. J. Dallas, Esq. Secretary of the Commonwealth. Warden's Office, July 3, 1795.

SIR,—I beg leave to inform you, in regard of the schooner *Rose*, that she cleared out at the customhouse, on the 18th day of March, under the name of the *Dorada*. I never heard of her being permitted to clear out at the collector's office, until the 21st of the month, which I heard from the collector himself, that she was permitted to clear out. The complaint coming from the collector and surveyor, I concluded that the officers of government were satisfied that there was no augmentation of force, or they would not have permitted her clearing out for the West Indies. I applied to the governour for an order to let her pass the fort, which he gave at his own house to the officers of the fort, to let her pass on producing her clearance from the collector of the port, which I transmitted to the fort. I am, &c.

N. FALCONER, Master Warden of
the port of Philadelphia.

True copy.

P. A. ADET.

No. 80.

Extract of a Letter from the Secretary of State to Richard Harrison, Esq. District Attorney of New York, dated October 1, 1795.

“HEREWITH I transmit the translations of a letter of the 24th ultimo and other papers received from Mr. Adet the minister of the French Republick, relative to the privateer *La Vengeance*, arrested by process from the district court of New York, and her Spanish prize libelled in the same court. I beg you will again examine this business, and as early as possible favour me with such information as will enable me to make an answer to Mr. Adet, that may or ought to be satisfactory.”

No. 81.

The Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, October 16, 1795.

SIR,—A divided attention between two departments, I must pray you to accept as an apology for my delays in answering your letters and communicating expected information.

I now enclose an extract of a letter from Mr. Harrison, the district attorney for New York, relative to the privateer *La Vengeance* and her prize; by which you will perceive that whatever may be the event of the suits pending in court, concerning her and her prize, the publick officer, Mr. Harrison, is supported in his proceedings, by the laws and usages of this country, upon such evidence and information, as in the case referred to, were produced.

I am very respectfully, sir, &c.

TIMOTHY PICKERING.

No. 82.

Extract of a Letter from Richard Harrison, Esq. District Attorney of New York, to Colonel Pickering, dated October 3, 1795.

THESE observations will naturally lead to the case of the privateer *La Vengeance*, against which two suits have been brought on behalf of the United States; the suit against the prize being of a private nature, wherein *as attorney of the United States*, I have no concern.

It is rather extraordinary that the mere institution of these suits for offences against the laws of our country, should be considered as a just cause of complaint by the agents of a foreign nation; since until the final sentence of the constitutional tribunals, it cannot be legally discerned whether the complaints are well founded, vexatious, or properly instituted upon probable cause, though the scale of evidence may finally preponderate in favour of the accused.

Without adverting, however, to this point with the particularity it may deserve, I proceed to observe, that previous to the commencement of the first suit, such information was given as afforded, in my judgment, a probable cause for the prosecution. This did not arise, as the French minister supposes, from *simple suspicions*, or the mere allegation of the Spanish consul. That gentleman laid before me papers, carrying every appearance of authenticity, relative to the fitting out and arming of the privateer, and I had assurances upon which I could depend, that *direct evidence* would be produced of illegal measures for this purpose, taken either in Philadelphia or elsewhere in the river Delaware.

Under these circumstances I judged it my duty to proceed *officially*, for the only breach of law with which I was then acquainted, and I should have esteemed myself culpable if I had neglected to do so. It was sufficient that I was assured of having the evidence at a proper time to manifest the propriety of the suit, and before that time, it was unnecessary to possess it. Neither the laws of the country, nor the practice of our courts required the filing of any previous affidavit where the suit was commenced by the attorney of the United States on their behalf; and such a practice might often be attended with pernicious consequences, by disclosing the name of the person who gave the information, and the nature of the evidence to be produced. Whatever, therefore, may be the ideas of persons unacquainted, or but little acquainted with our laws, must be wholly immaterial upon this subject; but they may rest assured that I should never resort to any mere pretences in justification of my conduct, and I may safely challenge any person to produce the law which would render such an affidavit necessary, unless in case of a common informer.

The first suit against the privateer having been thus commenced, the testimony of her illegal armament within the United States, has been actually furnished by more than one witness; but in the course of the hearing such a variety of clashing and contradictory evidence was produced, that it became impossible to foresee the event. This, you may remember, was at a very early period said to be *problematical*, though no doubt was entertained that

probable cause would appear to justify the seizure and detention.

During the time of exhibiting the testimony in the cause originally commenced, it appeared in evidence by the showing of the claimant's witnesses that the privateer had been employed in exporting ammunition from the United States, at a period when such exportation was prohibited. Had the fact been known in season, it would have formed a charge in the original suit ; but that not being the case, as soon as I was informed upon the subject it became my duty to file another libel for an apparent breach of the law, subjecting the vessel to condemnation. It was indeed in evidence that the ammunition exported came from a French frigate lying in this harbour ; but the law had made no exception for such a case, and to imply one would have furnished the means of evading all its salutary provisions.

From this detail it must be evident, that my conduct in the commencement of the second as well as of the first suit, was dictated by the duty incident to the office which I have the honour to hold. In the execution of that duty I am incapable of violating decency, or outraging any person ; especially those who, from their connection with this country, or their publick character, are entitled to respect.

Had the commencement of the second suit been deferred until the termination of the first, there might have been more colour for complaint ; since in that case, the privateer might have undergone a second detention ; whereas in the present mode of proceeding, the claimant, if he thought proper, might bring both suits to a close at nearly the same period.

In this whole business, however, I have undoubtedly acted from my own opinion, founded upon such evidence as came to my knowledge ; and as, in similar cases, I must necessarily in the first instance be unacquainted with the opinions and convictions of others, I know of no other rule by which I can be guided, unless when I am honoured with the directions of the chief executive magistrate.

It would perhaps be unnecessary, if not improper for me to enter into a minute discussion of the papers produced by the French minister, or the evidence respecting the

cause whilst it is a subject of judicial examination. Permit me however to observe, 1st, That even if they are sufficient to warrant the acquittal of the privateer, it will by no means follow that the seizure and detention were improper; otherwise, it would be necessary in all cases to try the cause before the commencement of the suit. 2dly, That the bill of sale has been produced to the district court on behalf of the claimant, and will receive from the justice of that court its proper interpretation, either as evidence of a genuine contract, or as a mere cloak to disguise the transaction. 3dly, That general Laveaux's certificate (whatever respect it may be entitled to) is not to be considered as evidence in the cause; and if it could be made so, the claimant would be very cautious of producing it, on account of its differing from the witnesses. And 4thly, That the certificates of Mons. Vilatte, and Mr. Falconer are such as do not contradict the supposition that the vessel may have been prepared and fitted for her armament in the port of Philadelphia, and that she may have received it on board before she quitted the Delaware, though she acquired additional force in the West Indies.

No. 83.

New York, December 5, 1796.

SIR,—In Mr. Adet's official note to you of the 15th ult. I find a charge against me as one of the officers of government, for delaying the decision of the suits instituted in the district court for this district, against the prize ship *La Princesse de Asturias*, and the privateer *La Vengeance*. As the reputation and interests of the government, in its foreign relations, are intimately connected with the conduct of its officers, I think it my duty to furnish you with the following state of facts.

I was appointed clerk of this district, immediately after the courts of the United States were organized; and being then a practiser in the state courts, the judge of the district also permitted me to practise in his court. Being thus permitted to practise in the district court, I supposed myself at liberty to be concerned for Don Diego Pintado, as well as for any other individual. The suit which I in-

stituted for him was not instituted wantonly, but upon information which was afterwards verified by the oaths of several witnesses. In the progress of the cause, these witnesses were contradicted by the witnesses produced on the part of the captors; and a decree was finally given for the captors, under an opinion of the court, that their witnesses were entitled to the greatest degree of credit. If the witnesses of Don Diego Pintado had not been contradicted by those of the captors, it cannot be doubted that he would have obtained a decree for the restitution of his property.

The libel of Don Diego Pintado was filed on the 2d, and the answer and claim of the captain of the privateer, on the 13th of July, 1795. On the 17th of the same month the parties proceeded to examine their witnesses. It was not until the 11th of November following that the examination of witnesses for the captors was closed; and in two days afterwards the cause came on to be argued. The delay in taking the testimony did not arise from any circumstances which can cast even the shadow of an imputation upon me or the counsel associated with me. There were many witnesses on both sides: some of them came from Philadelphia, and others from the West Indies, after the cause was at issue and the proofs became necessary; all the examinations were reduced to writing, and most of them were lengthy; the yellow fever prevailed in this city, and so general and destructive were its ravages, that Mr. Edward Livingston, the proctor for the captors, deemed it prudent to retire to Long Island; Mr. Brockholst Livingston, one of their counsel, for the same reason, removed to Dutchess county, more than eighty miles up the North River, where he remained until the fever subsided; and their leading counsel, Mr. Duponceau, was an inhabitant of Philadelphia. The proctor and counsel, however, of Don Diego Pintado continued in the city, and were at all times ready to do every thing in their power to expedite the cause. On the 10th of December, 1795, the district judge pronounced his decree in favour of the captors. An appeal from this decree was immediately interposed, by direction of the Spanish consul, to the next circuit court of the United States for this district, which by law could not be held before the 5th of April, 1796. Not long after the appeal was interposed, Mr. Hamilton,

Mr. Harrison and I had a conference with the Spanish consul, at which we assured him it was our unanimous opinion that there was little or no probability of ultimate success in the cause, and therefore we could not advise the continuance of the appeal. The Spanish consul in reply asked us for our opinion in writing, that he might transmit it to the Spanish consul general at Philadelphia, and receive his instructions. We accordingly delivered to the Spanish consul a written opinion subscribed with our names, in which we unanimously treated the cause as one that was nearly hopeless, and strongly discountenanced the further prosecution of it. We did not preserve a copy of this opinion, or I should now transmit it to you: the original I understand is in the hands of the Spanish consul general. In the course of a few days after the Spanish consul had received our written opinion, he informed me that the agents of the Spanish government at Philadelphia, having taken charge of the suit merely as publick officers, felt themselves bound to pursue the straight course marked out by the laws of the United States, and to apply for the judgment of the court sitting in the last resort. This answer was decisive with the counsel for Don Diego Pintado. They were obliged in faithfulness to the trust reposed in them to prosecute the appeal and prepare it for argument at the circuit court appointed to be held on the 5th of April—this was done—the cause was argued again—and the decree of the district court was affirmed. A writ of error was then brought in compliance with the instructions which the Spanish consul had previously received from the consul general. An early opportunity was afterwards taken by the counsel of Don Diego Pintado, to impress upon the mind of the Spanish consul the desperate situation of the cause, inasmuch as it would go up to the supreme court with a case made by the circuit court and forming a part of the record, which would probably be conclusive upon the supreme court, and compel it to affirm the judgment of the circuit court. The same considerations nevertheless, which led to the prosecution of the appeal from the sentence of the district court, determined the agents of the Spanish government not to discontinue the writ of error. All the preparatory steps proper to put the cause in such a state as to entitle it to be argued at the next supreme court, at which the writ of

error was returnable, were consequently taken. The term of the supreme court commenced on the first Monday in August, 1796, at Philadelphia, and on that day, if older business had permitted it, the cause might have been heard. During the term, however, the cause was heard and the judgment of the circuit court was affirmed.

In a cause removed into the supreme court by a writ of error, that court is not authorized to issue execution to enforce its judgment, but is required to remand the cause to the circuit court, by special mandate for execution. In the interval between the rendering of judgment by the supreme court, and the presenting of the mandate to the circuit court, all further proceedings in the cause are necessarily suspended, and nothing can be done but by the courtesy of the unsuccessful party. The circuit court for this district sat on the 5th of September last, which was rather more than a fortnight after the decision of the supreme court; and yet no advantage was taken or attempted to be taken by the counsel of Don Diego Pintado of the suspension which the law created. So far from it that I wrote a letter to Mr. Duponceau, in Philadelphia, the very day I heard the supreme court had given judgment, in which I mentioned that the circuit court would sit on the 5th of September following; that little business would come before it, and therefore its term was likely to be short; and that I was willing to concur in arrangements for the immediate assessment of the damages which the circuit court might award to the captors; and I added that the supreme court having decided upon the merits of the cause, I wished he would send the captain of the privateer, then in Philadelphia, to me for the money brought into court, as I meant to pay it to him without waiting for an order from the circuit court, for the purpose. Mr. Duponceau communicated my wish to the captain of the privateer, and he accordingly came on and received the money before the circuit court began; and in pursuance of arrangements by mutual consent the damages were assessed in time to be finally decided upon by the circuit court. Without these arrangements it is more than probable that the captors, according to the usual course in similar cases, would not have received their damages until after the circuit court, which will be held on the 5th of April, 1797.

From this state of facts, I presume it will be evident to every unprejudiced mind, that Mr. Adet's charge against me is wholly unfounded. Were the preceding facts incapable of proof, I might safely appeal to the candour and liberality of the counsel for the captors, as witnesses of the fairness and propriety of my conduct in every stage of the cause; and if they said one single syllable to my prejudice I would plead guilty and submit to be banished from my country, as unworthy of its confidence. I make use of strong terms, because I know that my integrity places me upon high and solid ground. If Mr. Adet, before he published his note had taken the trouble of inquiring of Mr. Duponceau, relative to my conduct, he would have been told that the tenour of it throughout the cause was fair, honourable and liberal. I am possessed of several letters from Mr. Duponceau in which he emphatically expresses this opinion, and returns me his thanks.

Not having been concerned in the suit against the privateer, I refer you to the attorney of the district for such information respecting it as he may suppose it proper to give you. With sentiments of the purest esteem, I have the honour to be, &c.

ROBERT TROUP.

No. 34.

Mr. Harrison, District Attorney of New York, to Mr. Pickering, Secretary of State. New York, Dec. 12, 1796.

SIR,—Mr. Adet's long and extraordinary note of the 15th ultimo, could not fail of exciting both surprise and attention. The variety of ill founded charges which it contained against the most revered and respectable characters in our country, and its general strain of censure upon the wise and impartial measures of government, had a natural tendency to make the reproaches it contained upon inferior individuals be considered rather as marks of honourable distinction, than as inflictive of disgrace. Under these impressions, and conscious that as far as I was implicated in his censures, they were wholly unmerited, I had balanced with myself whether it could be proper to add any further statement to those communications respecting the case of *La Vengeance*, which had already

been transmitted to the principal officers of government. Lest, however, any thing should be wanting to a complete vindication of the courts and officers of justice, as far as I was personally concerned, and in deference to the request contained in your letter of the 10th instant, I shall briefly recapitulate the circumstances attending the several suits against the privateer, with the particular reasons that influenced my conduct as prosecutor for the publick. I trust that the detail will fully confirm not only the purity of those motives by which I was actuated, but also the propriety of the measures which I thought it right to pursue.

About the latter end of June, or beginning of July, 1795, the privateer *La Vengeance* arrived with a valuable prize, in the harbour of New York, at a time when I was absent from the state, upon a tour to the eastward for the recovery of my health. Upon the 2d of July, if I am rightly informed, a suit was commenced on the admiralty side of the district court, by the Spanish consul, on behalf of the original owner of the prize, upon an allegation that the privateer had been fitted out in the United States. This cause was commenced in my absence, by the advice of colonel Hamilton and Mr. Troup. I had no participation in the business, nor any knowledge of it;—though, if I had been applied to, I should not have thought it incompatible with my station to have been originally concerned for the libellant; as the free exercise of profession in all causes where the United States are not parties, belongs to the district attorneys. Before my return to New York, the cause had already made some progress; the libel was filed, the prize arrested, and a claim, I think, instituted by captain Berard on behalf of one Jacques Rouge, whom he alleged to be the owner of the privateer. Mr. Adet's insinuation, therefore, *that the prize was arrested in consequence of any exertion or appearance of mine*, is totally unfounded, and to be classed with the other groundless reproaches by which his note is distinguished.

Upon my return the consul of the king of Spain, at New York, complained to me in my official capacity, of a violation of law on the part of the privateer, in consequence of which a Spanish subject had been injured. This complaint was entitled to attention, both from its own nature and the situation of the complainant. I could be under

no improper bias from any connexion with the prize cause, even if I was capable of being so biassed; because, at that time, I had no concern in it; and therefore Mr. Adet's observation that I acted "without laying aside my office of attorney for the captured" is equally unfounded with the one above noticed.

Upon making the inquiries which I supposed requisite, I found at least a probability that the complaint respecting the privateer was true. This probability arose from what I considered as affording the certainty of *material proof*: and therefore, in conformity with my duty, I commenced a prosecution grounded upon the statute, prohibiting the arming of privateers in our ports. In the course of proceeding against the privateer, it was manifest, that the cause of the United States and that against the prize were substantially the same, and it was agreed that the evidence taken in the one cause should be used in both. After some time, colonel Hamilton's numerous engagements rendered it impracticable for him to attend constantly to the examination of witnesses, and as questions arose with respect to the cause against the prize, which did not emerge in that of the privateer, I was engaged to assist as counsel in the prize cause, continuing alone as to every thing that respected the publick prosecution. This I may aver to have been carried on with the utmost fairness on the part of the United States, and no methods whatever were employed to delay the decision, which however was necessarily retarded, in part by the time consumed in examining the numerous witnesses produced on behalf of the claimants, and in part, by the calamitous situation of New York at that period. Perhaps, too, there never were causes in which more contradictory and irreconcilable evidence was offered, and in which the minds of the auditors were more divided as to the real state of facts. The judge of the district took a considerable time to examine the evidence and form his opinion, and though his decision was in favour of the claimants, yet he expressly declared that there was probable cause for the seizure, which has ever been considered as sufficient to justify a prosecution on the part of the publick, and I believe that whoever will examine the mass of jarring evidence that was taken upon this occasion, will accord in that opinion, though he may think that under all the cir-

cumstances, the facts were too doubtful to warrant a condemnation. To the judge's sentence upon this prosecution, I thought it reasonable to submit on the part of the publick, and as one of the counsel in the prize cause I united with my associates in recommending the like submission in that cause also. These are all the observations which I think it can be proper to make with respect to the first cause commenced against the privateer.

With respect to the second prosecution, which Mr. Adet says, "*is principally in question,*" the facts are these. During the course of the examinations in the first cause against the privateer, it appeared that a quantity of arms and ammunition had actually been exported in her from the United States at a time when such exportation was prohibited, and though I had been led to suppose from some of the testimony, that these had formed a part of the privateer's equipment, yet as this was contested, I thought it my duty to file another libel or information, stating the exportation as a breach of the prohibitory law. Mr. Adet is pleased to say, that "this information was made upon the simple declaration of Mr. Giles, marshal of the court, who as informer was to have his part of the confiscation." In the first part of this assertion, Mr. Adet is certainly mistaken. The information was founded upon the evidence appearing in the other causes, not upon any declaration made by Mr. Giles; and as Mr. Giles was not the informer, but merely the seizing officer, I do not know that he would have been entitled to any share of the property if confiscated.

After the filing of the second information, it is remarkable that captain Berard (who could best have contradicted the allegations contained in it, if they were not true) does not appear to claim upon oath, as in the other causes; but this task is devolved upon the French consul, who could only speak from information.

In the progress of the cause, however, the exportation of cannon is denied; the muskets attempted at one time to be made fowling pieces, and at another the property of passengers; and the powder, with some ball which accompanied it, is alleged to have been part of the equipment of a French frigate, and to have been afterwards replaced; but without explaining whence or in what manner the supply to the frigate was obtained.

Under these circumstances, the judge of the district pronounced sentence of condemnation against the privateer, founding his decree upon the exportation of the muskets, but without giving any direct opinion as to the powder, which in my judgment formed the most important and serious question in the cause; because, if foreign vessels of war might supply the ships or colonies of their nation with ammunition, from their equipments, and again replace the same, probably by purchases within the United States, every prudent and necessary precaution to preserve among us the means of defence, might at the pleasure of foreigners be rendered abortive.

The sentence of the district court in this cause having been pronounced, an appeal, as stated by Mr. Adet, was interposed by the French consul at New York, and about this period a sale of the privateer took place by consent. If the parties interested suppose that this vessel would sell for no more than a "tenth part of the cost of her armament," it was optional with them to have refused their consent. I know no law of Congress such as Mr. Adet alludes to, requiring vessels to be given up upon security, under the circumstances stated. No such law was produced by the consul or his attorneys, and it would have been palpably improper, that a privateer condemned by the sentence of a court of justice, should by any act of an officer of the executive government go into the hands of one of the belligerent parties completely equipped to cruise against its enemies. Such an act would probably have been considered as a deviation from strict neutrality, and might have been productive of serious consequences.

In the month of April last the appeal in the case of the privateer came on to be heard before judge Chase, in the circuit court for the district of New York. Whatever might have been the expectations of the consul or his attorneys, they did not choose to rest their cause upon the evidence taken in the district court; but upon the first day of the hearing produced new witnesses. After these had been heard the argument was commenced for the appellant and answered on the part of the respondents; but as the judge plainly intimated his opinion for confirming the former sentence, unless further evidence could be produced to a particular point, the appellant's counsel applied for and obtained a delay of two days, and in that interval, by some

fortunate casualty met with a witness, who had only been a few months at New York, and was able to remove every difficulty.

In consequence of this new evidence, judge Chase thought proper to reverse the sentence of the district court condemning the privateer; but he not only certified that there was *probable cause* for the prosecution, but as the innocence of the party had not been manifested in the early stages of the cause, he directed all the fees of the officers of the court to be paid by the claimant.

As this decree of the circuit court had been obtained under extraordinary circumstances, and as the question respecting the powder still appeared to me of the utmost importance, I thought it my duty to enter an appeal to the supreme court, and to prepare a state of the case, that the superior officers of government might judge whether it should be prosecuted or abandoned.

If any further information as to this cause should be deemed necessary, I must refer to the state of the case abovementioned, and which was transmitted by me to the secretary of the treasury. I have only further to observe that I am ignorant how the officers of the district court were "interested in the condemnation of the privateer or her prize." I believe that the fees of the clerk and marshal were the same, whether they were acquitted or condemned: and I am certain, that as to myself, the charges against the United States did not at all depend upon that circumstance. I hope indeed, that I shall at all times be incapable of commencing or carrying on a prosecution merely with a view to my own private emolument. I am ready at any time, to meet inquiry upon this subject, and I am satisfied that any person who in this free and enlightened country, could so far be blinded by mercenary motives as to prostitute his office for the gratification of them, would be soon removed from it with ignominy, if he should even escape any other punishment.

I have only to add, that with the highest respect, I have the honour to be, &c.

RICH. HARRISON.

No. 35.

CASE OF THE CASSIUS.

TRANSLATION.

The Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 22 Thermidor, 3d year of the French Republick, one and indivisible (the 9 August, 1795, O. S.)

SIR.—The corvette *le Cassius* belonging to the French Republick, is detained in the port of Philadelphia, her captain cited before an American court, and was yesterday arrested in virtue of a warrant. He would have been imprisoned, if I had not ordered the consul to give bail for him: the proceedings were carried still further; an attempt was made to arrest him on board his vessel.

I have received from the captain a report of the motives for his arrest: the result is that he was taken before a court to answer for an act committed by him on the high seas, as commander of a state vessel.

We should distinguish, sir, between the acts of a private citizen and those of a publick agent. The law is universal that private individuals should be amenable, for offences committed by them in a foreign territory, to the courts of that territory, and subjected to the penalties of the laws of the country.

But the acts of a man in the character of a publick agent are not his own; he represents his government, and if he conducts so as to excite the complaints of the citizens of another state, or of this state, justice should not be required of him, but of the government from whom he holds the authority in virtue of which he has done the act complained of.

It is his government alone that is to judge, whether the orders it has given have been well executed or not, and to approve or punish its agent accused of an improper act towards neutral or allied nations, and to make such reparation as it deems just and equitable. Therefore the party complaining should lay their complaints before it, either directly or through the medium of its own government. Were it otherwise, one government would become

amenable to another; which would reverse the first principles of the rights of nations.

This incontestable principle is corroborated by the 15th article of our treaty, which states literally—"and that more effectual care may be taken for the security of the subjects and inhabitants of both parties, that they suffer no injury by the men of war or privateers of the other party, all the commanders of the ships of his most christian majesty and of the United States, and all their subjects and inhabitants, shall be forbidden to do any injury or damage to the other side; and if they act to the contrary they shall be punished, and shall moreover be bound to make satisfaction for all damages and the interests thereof by reparation under the penalty and obligation of their person and goods." This article evidently carries with it the right of causing the officers of both nations to be tried by their own government, as it says that it "shall be forbidden," &c.

This prohibition is made to the French by the French government—to the Americans by that of the United States. He alone who makes a prohibition has the right of punishing infractions of it.—Hence it follows that the commander of the corvette *Le Cassius* cannot be punished but by the French government, should he merit punishment from the complaints which shall be exhibited to it by yours.

The conduct of France to the United States should not lead them to imagine that she will ever be inattentive to their just complaints—she has been and always will be eager to repair in an ample and complete manner the slightest injury done to your rights.

What motive then could have led the American courts to arrogate to themselves the cognizance of the conduct of French agents? It gives me pain to disclose the matter to you. Yet, sir, it is not the first case that has presented:—General Collot is brought here before a court, as governor of Guadaloupe. I shall have the honour of addressing an official note to you on this subject.

I return to the affair of the corvette *Le Cassius*. She is detained here by the arrestation of her captain which is a violation of the 19th article of our treaty, of which the following is a transcript. "In case the subjects and inhabitants of either party with their shipping, whether publick, and of war, or private and of merchants, shall be forced

through stress of weather, pursuit of pirates, or enemies or any other urgent necessity for seeking of shelter and harbour, to retreat and enter into any of the rivers, bays, roads or ports belonging to the other party, they shall be received and treated with all humanity and kindness, and enjoy all friendly protection and help; and they shall be permitted to refresh at reasonable rates with victuals and all things needful for the sustenance of their persons, or reparation of their ships, and conveniency of their voyage; and they shall no ways be detained or hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance."

This arrest is likewise in this case very injurious to the interests of the Republick, as the vessel is on a very important mission, and should depart without delay.

I return, sir, and observe to you that the arrest of the captain of the French corvette *le Cassius* is a violation of principles and of our treaty. I therefore request

1st. That you use the proper means for the liberation of the captain of the *Cassius*, and for removing the seizure of the vessel agreeable to the 19th article of our treaty with you.

2. That you have the complaint transferred to the French government, who will repair the injuries committed (if he has acted without orders) in pursuance of the 15th article of the same treaty.

The desire which you have more than once testified to me, sir, of rigorously maintaining the observance of our treaties leaves me no doubt of your disposition to do justice to my demands. I therefore confine myself to request you to accelerate your answer and the solution of this affair.

Accept, sir, &c.

P. A. ADET.

No. 86.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 24 Thermidor, 3d year of the French Republic, one and indivisible, 11th August, 1795, O. S.

SIR,—I have just received the documents you will find enclosed. They relate to the corvette of the Republic, the Cassius. I had every reason to hope, that the letter which I wrote you on the 22d Thermidor (9th August, 1795), would have been productive of its full effect. I cannot but consider the arrest of the corvette of the Republic, the Cassius, as contrary to the 19th article of the treaty of France with the United States. Consequently I renew my request to you, to obtain the execution of this article. Besides I will observe to you, that my government has ordered me to claim the literal execution of our treaties, and that you will never claim the like of the French Republic in vain.

I cannot credit the report made to the consul at Philadelphia. I cannot believe, that it should be undertaken to take away the sails and apparel of a publick ship, and consequently I forbade the consul to give security for the corvette the Cassius. It is for you to judge, sir, what is proper to be done in this affair, which appears to me to be more important than can be well imagined. I will close this letter by observing to you, that the Cassius is to sail in six days upon an important errand.

Accept, &c.

P. A. ADET.

No. 87.

TRANSLATION.

WE, the officers, sailors and soldiers, composing the crew of the corvette of the Republic the Cassius, commanded by S. B. Davis, lieutenant of the navy, being at the wharf of Philadelphia, certify, that on the 24th Thermidor, in the 3d year of the French Republic one and indivisible (or 11th August, 1795, O. S.) about six o'clock in the morning, there came on board an American, hold-

ing in his hand a large piece of paper, which was written upon : he addressed himself to one of us, who was officer of the guard : he spoke in the American language : not understanding him, we desired a man who happened to be on board and who understood the American language to be pleased to interpret in French what the American wanted ; and after speaking with him a short time in the American language, he told us that the bearer of the written paper had come in behalf of the police of Philadelphia, that his business was against the captain and the corvette, and that he desired to affix the said paper to the main-mast. We answered him by the same means, that the corvette belonged to the Republick, that we could not permit any thing to be affixed, but by order of the representative of the French nation, telling him besides, also by means of the same interpreter, that if the American nation had any complaints to make against the Republick, there were ministers or representatives of the French in this city, that it might lay its demands or complaints before them : to which he answered us, that he did not come of his own accord, that he must do his duty, and since we would not permit him to affix his said paper, that he would render an account of it to his superiors, and that orders would be given to the fort to hinder the departure of the corvette and to arrest her, and finally he retired. Of the whole of what is written above and on the preceding pages we have made the present report, to be immediately sent to the representative of the French people resident at Philadelphia, to serve and avail as it ought : Done on board the said corvette, the day, month, and year aforesaid : this we signed after it was read with a loud voice in presence of the crew.

Ruault, (lieutenant en pied, &c.)

Jn. Forest Charpentier, Guillemort,

Delisle, F. Clich and Theiri.

The copy conformable with the original.

P. A. ADET.

No. 38.

TRANSLATION.

The Consul of Philadelphia to Citizen Adet, Minister Plenipotentiary from the French Republick to the United States. Philadelphia, the 24th Thermidor, 3d year of the French Republick, one and indivisible.

IN conformity with your letter of the 21st of Thermidor, I gave security for the lieutenant of the navy, Davis, commander of the publick corvette the *Cassius*. I this moment understand, that an American publick officer went on board of the *Cassius* and wanted to post up a paper on the main-mast: the officer who then commanded opposed it.

The judgment respecting captain Davis which was to have been pronounced to day has been adjourned till Friday. At present, security is demanded for the vessel, in default of which, they will go on board and take away the sails, apparel, &c.

Shall I give security in the name of the Republick to the value of this vessel? I cannot do it as an individual for I have not the means.

An answer will be called for in four hours: I expect by that time to receive yours.

A true extract.

P. A. ADET.

No. 39.

TRANSLATION.

The Minister Plenipotentiary of the French Republick near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 1st Fructidor, 3d year of the French Republick, one and indivisible (Aug. 18, 1795, O. S.)

SIR,—I have this moment received a letter from the captain of the corvette *le Cassius*, informing me that the practice made use of to corrupt his crew has succeeded. Eighteen of them deserted yesterday. Thefts were last

might committed on board by unknown persons, and the captain still apprehends other disorders.

Should this vessel receive damage, go to decay, or not be able to fulfil the mission with which she is charged, and from those causes the interest of the Republick suffer an injury, permit me to inform you, sir, that it must impute it only to a want of energy in doing justice to my equitable representations. I ought not, nor can I address myself to any person but yourself; I do not know, nor ought I to know, any other than the government of the United States; I cannot admit, under any shape, the competency of your courts in the different circumstances arising from the execution or inexecution of the treaties. If these courts are the first to violate them, I can only apply to the government for a redress of that violation; otherwise it would be rendering the agents of the French government, the French government itself, amenable to these tribunals; which would be reversing principles.

I doubt not that you have been penetrated with these principles, since Mr. Duponceau writes me that you had instructed the district attorney of Pennsylvania to manage the cause with the district court, in which the affair of the *Cassius* is pending. But this step will not have the desired effect, because the favourable decision that he may obtain will of course be liable to an appeal, and thus the vessel may be detained eight or ten months for a definitive decision.

I cannot accede to the proposition of the attorney to furnish security for the vessel. If security must be furnished, it should be done by the government of the United States; as it must answer for the execution of the treaties to the French Republick, and as the 9th article of our treaty is violated by the conduct of the district court of Pennsylvania.

It seems to me, sir, that there is a mode for determining this affair. The government of the United States may ask and obtain a prohibition from the supreme court, to the inferior courts, stopping proceedings similar to the case in question. Then, sir, you might take such measures as you think proper for liberating the *corvette le Cassius* and her captain.

Such are the observations which I have to present to you. I venture to hope that you will be pleased to take

them into consideration, and render full operation to our treaty. Accept, sir, &c.

P. A. ADET.

No. 90.

Mr. Pickering to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, Aug. 25, 1795.

SIR,—The President of the United States having assigned to me a temporary agency in the department of state, vacant by the resignation of Mr. Randolph, your letter of the 10th inst. was consequently put into my hands. I received it on Saturday the 22d, and have since lost no time in making the inquiries necessary to enable me to return an answer.

The outrage committed towards the Republick of France in the person of your predecessor, by the British ship of war the *Africa*, being a violation of the neutrality of the United States, and of the laws of nations, engaged the immediate attention of our government. The case was stated to Mr. Hammond, the British minister; but his departure for London, and the consequent transfer of the duties of his office to Mr. Bond, at present charge des affaires of the British government, have doubtless occasioned some delay. I can, however, assure you, that measures have been taken, and will be strictly pursued, for obtaining every reparation in our power for any injuries committed, and for asserting the just rights of the French Republick, so far as they have been infringed within the jurisdiction of the United States. You shall be duly informed of the result, as soon as it shall be ascertained.

On the subject of the corvette *Le Cassius*, which has been arrested at the suit of a citizen of the United States, Mr. Randolph has already informed you, "that as long as the question is in the hands of our courts, the Executive cannot withdraw it from them." Of the truth of this principle, I trust no doubt will be entertained. As speedy a decision as the necessary forms of proceeding would admit, you had a right to expect. The answers received to my personal inquiries authorize me to say, that on the part of the court, in which the *Cassius* was libelled, there was no unnecessary delay. Finally, a prohibition to the

district court was moved for in the supreme court of the United States, where the motion was supported by such an exhibition of facts as induced the court to grant the prohibition: in consequence of which the *Cassius* was immediately liberated.

But I have since learned that an information has been filed in the circuit court of the United States, against *Le Cassius*, as a vessel illegally armed and equipped within the jurisdiction of the United States.

I believe it will not be controverted, that *Le Cassius* is the same vessel which departed from the port of Philadelphia, in December last, by the name of *Les Jumeaux*. This vessel (*Les Jumeaux*) openly resisted in arms the authority of our government, attempted to be enforced against her for a violation of our laws. The circumstances are detailed in the official report of David Robinett, dated Jan. 5, 1795, of which I enclose a copy.

This vessel is also understood to be at present commanded by a citizen of the United States, who went out in her, ostensibly as a passenger, and who consequently was on board of her when the laws of the United States were forcibly resisted.

Now admitting the facts to be as here stated, can it excite any surprise that *Le Cassius* should be subjected to the course of legal process before the courts of the United States? I persuade myself, sir, that your candour will allow there is ground sufficient to institute a legal inquiry, and to acquit our officers and tribunals of even the suspicion of improper interference in this case.

You are pleased to advert to the new treaty between the United States and Great Britain: but even if it were in operation, which is not the case, the assurances which have been given you are certainly just, that it could not weaken our engagements to France. These are secured by the laws of nations, and by an express stipulation in the treaty itself. I am, sir, &c.

TIMOTHY PICKERING.

No. 91.

Wilmington, Jan. 6, 1795.

SIR,—Your letter of the 29th ult. enclosing a copy of a letter from Mr. Rawle, also one to the governour of this

state, or the commanding officer of the militia, with one to the marshal of this district, I received the same evening at 11 o'clock. The letter to the marshal I immediately forwarded by express, and delivered the other to general Bedford, commanding officer of the militia in this place. He immediately ordered out 150 militia, under the command of major Grantham, who marched to Port Penn with all expedition, as the revenue cutter, under the command of captain Montgomery, lay there; I also attended, and found from inquiry, the ship Jumeaux, captain Ruall, lay opposite the Thrum Capps, supposed 25 miles below Port Penn. No other vessel could be procured than this cutter; it was thought most advisable to put a captain's command on board of her, with the deputy marshal and my deputy; and on the 1st of January, 1795, they proceeded down the bay: what occurred you will see from the enclosed report made by my deputy thereon.

I have the honour to be, &c.

GEORGE BUSH,
Collr. Dist. of Delaware.

General Henry Knox.

No. 92.

Report of David Robinett acting as Deputy Collector for the District of Delaware, respecting the ship Jumeaux, Captain Ruall.

December 31st, 1794. Agreeable to orders given to me by George Bush, collector of the district of Delaware, I proceeded to Port Penn in the revenue barge, and on January 1st, 1795, went on board the revenue cutter General Green, commanded by captain Jas. Montgomery, with Thomas Rothwell the deputy marshal, and captain Dale of the militia, with about forty men; we proceeded down the bay as far as Bombay Hook, where we found the ship Jumeaux lying at anchor. The cutter then hove to, near to the ship; the deputy marshal, captain Montgomery, captain Dale, ensign Van Dike and myself boarded the said ship in the cutter's boat, and found her to have no more guns than what appeared she cleared out from Philadelphia, viz. 4 six pounders, but they were mounted on old carriages, and two swivels—her ports

were opened for eighteen guns, with ring bolts, &c. and appeared to have about forty men on deck (and it was believed a number more in the hold.) She was deep waisted, near five feet high in her waist, and well found: as soon as we boarded her, the commanding officer was asked, if the ship was called the *Jumeaux*, and if his name was Rualt; to both of which questions he answered in the affirmative. The marshal and myself made known to captain Rualt, that we were civil officers of the United States, and by virtue of authority to us given for that purpose, do now seize the ship *Jumeaux*, for having violated the laws of the United States, by contravening our neutrality; and demanded of the captain forthwith to return with his ship to the port of Wilmington, to stand trial: captain Rualt, after much hesitation and equivocation, submitted reluctantly and promised to carry the ship back; and he accordingly weighed anchor and stood up the bay about three miles. Soon after the pilot, named Jos. Brussel, in consequence (as it appeared) of threats from the crew and the command of captain Rualt (as it was in French) bore away the ship and stood down the river again—captain Montgomery ordered the pilot to alter his course and stand up the river; he said he dare not act contrary to captain Rualt's orders: captain Montgomery took hold of him to send him on board the cutter; upon which several of the crew seized him, and by force and violence detained him. Captain Montgomery then hailed the cutter and ordered her to keep close on board; upon which there was an immediate cry of citizens to arms; and the boatswain also piped to arms: captain Montgomery knocked the pipe out of the boatswain's mouth, for which he was very much insulted, so much so that he laid his hand on his sword; and after which we were all treated very rude and insulting. They immediately manned their cannon and brought them to bear on the cutter, and run into the round house for their arms—captain Rualt said he could not command his men, that they were determined to go to sea, and would not return—night approaching, it was thought most advisable to leave the ship (though the marshal wished to stay all night.) The captain said he would not sail that night, but would come to an anchor, which he did—we accordingly returned to the cutter: and not having sufficient

force to stand her cannon, without sacrificing a number of good citizens, and perhaps to no effect, we returned to Port Penn about 10 o'clock that night. The next day major Grantham put as many men on board the revenue cutter as she could carry, and got a small sloop with the remainder of the troops on board, and the revenue barge, with a determination to board the ship—we got under way and proceeded down the bay, but could not find the ship, she had taken her departure with a fair wind and was out of sight. We then returned to Port Penn and the troops were ordered to their respective places to be dismissed.

DAVID ROBINETT.

Wilmington, January 5, 1795.

N. B. The boatswain, a Frenchman, and four of the men took the ship's boat the night after we left the ship and made their escape. He says they were discovered just as they left the ship; the officers ordered some of the passengers to fire on them, as they said they were all passengers, but none would fire: he reports they had ninety-five men on board, and plenty of ammunition; the ship he said got under way about nine or ten o'clock P. M. the night after we left them.

D. R.

No. 93.

TRANSLATION.

The Minister Plenipotentiary of the French Republick near the United States, to Mr. Pickering, Secretary of the Department of War, charged with the Department of State. Philadelphia, the 1st Vendemiaire, 4th year of the French Republick, one and indivisible, (September 22, 1795, O. S.)

SIR,—Possessing full confidence in the sentiments of the government of the United States, I presented to it my claims with regard to the corvette *Le Cassius*. If they were urgent, they were founded in justice.

In my first letter to Mr. Randolph, I complained of the arrest of the corvette *Le Cassius* in violation of our treaties; my complaints were just, and the supreme, prohibi-

biting the district court, from pursuing this affair is an evidence of it. Individual interest had confounded the principles developed in my letter of the twenty-second Thermidor to Mr. Randolph. The supreme court far from favouring the abuse committed, rendered homage to them. But, sir, individual interest does not always calculate upon principles: if in taking a step it misses the object it proposed to attain, it withdraws, and pursues another route.

The new arrest of the *Cassius* perhaps furnishes us with a proof of this truth. Perhaps the individual who first obtained a warrant against this vessel has been induced under the shadow of your laws to invent the story which compelled the authority to cause the *Cassius* to be arrested anew. Has Mr. Ketland who perhaps informed against the corvette *Le Cassius*, as having armed in the United States, wished only to serve the interest and feelings of friendship? Have not other sentiments probably dictated the step? His origin, his connections in this city, the desire of serving the country which gave him birth, by paralyzing in your ports a vessel of the Republick, by embarrassing the American government between its laws and the treaty, by troubling the harmony which subsists between your country and mine, and which certain people are interested in destroying? These perhaps are the true motives of an information coloured with the specious love of the laws. I am far from insisting upon these conjectures. I conceive I might have spared them, but they presented themselves to my imagination, and the confidence which your character inspires in me, doubtless authorizes me to transmit them to you.

Whatever may be the reasons which have influenced Mr. Ketland in the present circumstances, it appears to me that his information whether founded or not does not change the state of things, and that the violation of our treaty is not less manifest.

I shall not lead you to observe, sir, in order to support the conjectures I have presented to you, that the information of Mr. Ketland did not appear until the very day in which the seizure of the *Cassius* was taken off. I shall not wait to give you new suppositions which perhaps are not destitute of foundation, but will immediately pass to the proofs in support of my opinion before I inform you

of the course which these circumstances oblige me to take.

I conceive, sir, that admitting the armament of the *Cassius* in the United States, her seizure is invalid. For this vessel now belongs to the Republick, and the nineteenth article of our treaty expressly states that state vessels may freely enter and sail from the ports of the United States without receiving the least hindrance. The literal meaning of the article then permits the entry of the *Cassius*. If it were otherwise the Republick would become (in the hypothesis of armament in the United States) responsible for the faults, or wrongs of an individual. A vessel by changing owner would then always be a security for the faults of her first proprietor. If a frigate of the Republick should take an English vessel armed in the United States, and if from the fortune of war the *Cassius* should fall into the hands of these vessels, would they in that case be seizable? This conclusion, sir, naturally results from the state of things, but it is presumable that Mr. Ketland would not draw it if the English flag had waved on board the *Cassius*.

In the distribution of ordinary justice would it be equitable to seize the arms of a citizen, because before they belonged to him they might have been in the service of an assassin to commit murder? Would these arms be guilty of the crime of which they had been the instrument? Would their new owner by possessing them participate in the crime of their first proprietor, and if he were deprived of them for that reason, would he not have a right to complain? Whether the question relates to an individual or a nation, the principles are the same, justice is the same. And in cases in which an individual would be injured, so would a nation, if the nature of the relations and circumstances were always the same. Is not the example which I have just cited applicable to the arrest of the *Cassius*? The Republick therefore have a right to complain of the arrest of this vessel. She then has a right to demand the execution of the nineteenth article of her treaty with the United States, since no subsequent stipulation has suspended the execution of it.

But if in the hypothesis that the vessel armed in the United States, the *Cassius* should be delivered to

the Republick, by a much stronger reason, in the contrary position, should the seizure of this vessel be annulled.

You know as well as I do, sir, that the pretext for the arrest of the *Cassius*, is that this vessel under the name of *les Jumeaux* was formerly armed for war in the port of Philadelphia. But, sir, when this vessel arrived last year at Philadelphia (the time of the pretended armament) she was armed with four cannon and two swivels. 'The proofs of this fact must be in the customhouse. It is true also that one Guenet was convicted for having attempted to put cannon on board *les Jumeaux* which were intercepted on the way. But this attempt although punishable in the terms of your laws, is not an armament, and even had it succeeded, it would have been but an augmentation of force—and an augmentation of force is not an armament, and does not, according to the law of 5th June, 1794, occasion the confiscation of the vessel.

How shall we therefore, qualify the conduct of Mr. Ketland who could not be ignorant of the law? How shall we avoid seeing in it a formal design to insult the French Republick, especially when it is observed that he began the suit in a court which is incompetent to decide the case in question. Mr. Ketland and his counsel know very well that agreeable to your laws, it belongs exclusively to the district courts to decide in cases of forfeiture. Yet it was by the circuit court, which you know has only appellate jurisdiction that they have had the *Cassius* seized. This court has but two sessions in a year. It sits but once at Philadelphia. The district court on the contrary is always in session. If the affair of the *Cassius* had been brought there, a decision would have been obtained in a short time, but a considerable time elapses before a decision can be obtained in the circuit court; it will not fail therefore to declare itself incompetent. Of what importance is it to the men who have promoted the arrest of the *Cassius*, and who on that account are applauded? They will enjoy the satisfaction of having insulted the French Republick with impunity, and of having abused your laws in order to satisfy the hatred of England.

Whatever reason I had to complain on seeing a discussion relative to the execution of our treaties brought before your ordinary tribunals when it appertains according to all established rules among nations, to the government

of the United States, although I should in such cases only address myself to the government of the United States in order to obtain justice, it being charged with the execution of treaties, yet I did not wish to neglect any means of conciliation in my power, and latterly caused security to be proposed to obtain the replevy of the vessel, reserving to myself and to you the privilege of determining on an affair unpleasant in all its aspects, by subsequent negotiations.

In these hopes I have been deceived, the security was refused, and the affair is of course abandoned to the decision of the courts.

Justly alarmed at delays which nothing could control; at the expenses occasioned to the Republick, by supporting a vessel which rendered it no service; fearing with just reason lest the crew (a part of which has been corrupted) should desert after having been so expensive to the Republick, I have ordered her to be disarmed; and from this moment I abandon her to the government of the United States under the reservation of referring the matter to the French government.

I venture to hope, sir, that the government of the United States will take proper measures to prevent the forces of the Republick from being paralyzed in its ports, and evil minded people from abusing the laws in order to arrest every French vessel coming into the United States. For if a single information be sufficient to stop one vessel, there is no reason why the first frigate which shall arrive from Europe should not be seized as having armed in the United States.

Accept, sir, &c.

P. A. ADET.

No. 94.

Mr. Pickering, Secretary of War, charged with the Department of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, October 1, 1795.

SIR,—You have seen that the President of the United States, to maintain the respect due to them, had antici-

pated towards the British vice consul at Newport, that severity which in your letter of the 10th ult. you considered his offensive conduct required.

In your other letter of the 10th ult. you mention the violation of the rule prescribed by the President (conformably with the usage of European nations) to regulate the sailing of armed vessels of the belligerent powers, in the case of the British ship the *Africa* which pursued the *Medusa* immediately on her leaving the harbour of Newport. This additional insult and injury by captain Home, commander of the *Africa*, was represented in the first despatches, afterwards sent to the minister of the United States at London, who was required to demand reparation.

With great pleasure I acknowledge the very different deportment of the officers and company of the French frigate *Medusa*, of whom not a whisper of complaint has been lisped, and who I have reason to believe conducted with exemplary propriety and respect for the laws. Such would be the conduct of all foreign officers, in neutral ports, if they consulted either their nation's honour or their own.

On the 24th ult. I received your letter of that date and one of the 22d.

On the subject of the privateer *La Vengeance* and her prize, of which till the receipt of your letter of the 24th ult. I had no knowledge. I have written to the district attorney of New York, enclosing a copy of your letter, and of the four papers accompanying it, and desiring him to furnish me with such information as may satisfy the supreme Executive of the United States of the conduct it ought in this case to observe. Here I must rest this matter until his answer shall be received.

With regard to the armed vessel *le Cassius*, which is the subject of your letter of the 22d ult. I have some observations to make.

In the letter which I had the honour to write you on the 25th of August, I said that any delays which had happened in the district court, on the first process against the *Cassius*, were not to be ascribed to the *court*: I may now add, that if the counsel for the *Cassius*, had brought before the judge of that court, the same facts and evidence which were afterwards exhibited to the supreme court, to obtain the prohibition, this step would doubtless have been found

unnecessary: the district judge, influenced by the same principles, would probably have dismissed the libel. But that decision did not, I conceive, necessarily involve the present question.

Now that a new action has been commenced against the *Cassius*, I must repeat what has been already stated, "That as long as the question is in the hands of the courts, the Executive cannot withdraw it from them;" and therefore is not chargeable with suffering a violation of the treaty subsisting between the two republicks.

The fact, that the *Cassius*, under the name of *Les Jumeaux*, was *originally* fitted out as an armed vessel, in the port of Philadelphia, is incontrovertible. This was established on the trial of Guenet who superintended her equipment. You have been misinformed on this as well as some other points, both of law and fact. A vessel may be loaded with cannon and arms, and yet not be an *armed vessel*. The reason of this remark applies to *Les Jumeaux* when she arrived in the port of Philadelphia.

Now by the law of the United States, to which you refer, a vessel so originally armed and equipped is declared to be liable to confiscation. Whether the subsequent transfer of the property to the French Republick will exempt it from confiscation, is the question in court now to be determined. If the Executive were to attempt (and it could only *attempt*—for it would be the duty of the court to resist its mandate) to remove the question from the judiciary, it would be a violation of the constitution: and you will see immediately that the measure would be as unsafe as unconstitutional.

A fair investigation of the case of the *Cassius* might lead to this conclusion—That by the law of the United States, she was really liable to confiscation. This admitted, let us suppose her to be now discharged, by the consent of government without a trial: and that in her first cruise she should take from the enemies of the French Republick, prizes of very great value: what would be the consequence? The nations to whom, or to whose subjects the prizes belonged, would demand, and expect to be paid that value, whatever might be the amount—and it might be immense—by the United States. What also would be the consequence, if the mere act of transferring the property of the vessel would rescue her from condemnation? Ob-

viously that the design of the law—the prevention of illegally fitting out privateers—would generally be defeated: transfers would be promptly made, on purpose to evade the law. But the forfeiture of the vessel with all her equipments, much more than the personal punishment of the agents concerned in fitting her out, was considered by the law as the most effectual guard against the violation of our neutrality. And as to the legal consequence of a transfer, you have taught me to say, “that whether the question respects an individual or a nation, principles are the same—justice is the same.”

You have been informed that the circuit court is a tribunal incompetent to take original cognizance of the question of which we are treating: that of this the prosecutor could not be ignorant: and thence you see in this measure the design of a formal insult to the French Republick. But, sir, the counsel who have told you that such is the law, have led you into an error. The question does not respect a *confiscation* for the breach of the laws of *trade*—of which the district court has jurisdiction—but for the infraction of a *criminal* law; for which the penalties are a forfeiture of vessel and equipments—a fine against the persons concerned in equipping her, which may rise to *five thousand* dollars—and imprisonment which may extend to *three years*: to declare and inflict all which the circuit court is competent: but the district court can take cognizance of no *crimes* where the penalties may exceed *one hundred* dollars, and imprisonment for *six months*.

What were the motives of the prosecutor, in this case, I am not to inquire. Though once a foreigner, he is now a citizen of the United States. The laws of the country where he resides are in this respect impartial: giving no more countenance or support to him, than under the like circumstances they would give to an original citizen of France or Holland. Without resorting, however, to national antipathies, a nearer cause may be assigned, comprehending interest and resentments much more likely to be operative. The prosecutor was part owner of the prize taken by the *Cassius*; to obtain indemnification for which the first arrest was made: and in the pursuit of which he was defeated. Should the *Cassius* and her equipments be confiscated on the present suit, the law will give to the prosecutor, Mr. Ketland, one half their value. But whether

national or personal interests and resentments prompted his last step, or whatever were his motives, the court could not reject his claim presented in the form which the laws prescribe. I will close this subject with one remark—That if courts were permitted to take cognizance of those complaints only which originated merely in a love of order and pure reverence for the laws, few—very few criminals would be brought to justice.

You will see the difference between a prosecution grounded on the law of the 5th of June, 1794, when brought against the *Cassius*, a vessel, *clearly proved on a judicial investigation* to have been equipped in violation of that law, and a prosecution against a French “frigate coming from Europe, under the *pretence* of her having armed in the United States.” No one, it is imagined, would be so unwise, if he could be so unprincipled, as to attempt an arrest of the latter, and subject himself to the damages recoverable, I presume, for prosecuting a groundless and vexatious suit. Nor can I believe our ministers of justice would be so blind as not to discern the entire distinction between the two cases; or that they would not instantly reject the *information* founded only on *pretence*, while they as readily admitted the litigation of a question of law arising on a *fact* previously established before a *judicial tribunal*.

After the many assurances which have been given to the ministers of the French Republick, that the government of the United States holds itself bound as well by inclination, as by duty, faithfully to observe its treaties, it is unpleasant to receive so frequent intimations of its violating or suffering them to be violated. There are powerful motives to induce its exact adherence to them; and among these, a regard to its own dignity and reputation and a love of justice are not the least. But I ascribe what I complain of to its proper cause, misinformation from gentlemen conversant in our laws; but who ought to be more correct or less sanguine in their legal opinions. In the case you mention, where “neglecting no means of conciliation in your power, you directed security to be offered to obtain a release of the vessel,” the judge himself finding no law to warrant the measure, called on the counsel of the *Cassius* to produce it: one of them, more skilful in the laws

or more candid, confessed he knew of none; and *therefore* the security was refused.

After this detail, it will be unnecessary for me to declare to you, sir, that the government of the United States will not knowingly suffer "the force of the Republick to be paralyzed, or her vessels detained in our ports by ill intentioned people in abuse of the laws."

I am, with great respect, &c.

TIMOTHY PICKERING.

No. 95.

From Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, April 15, 1796.

SIR,—In my correspondence with you on the subject of the armed vessel the *Cassius*, which you claimed as the property of the French Republick, I had the honour to inform you, that such was the nature of the prosecution against her, the Executive must wait for the decision of the judiciary power. The court is now sitting in which that decision was expected.

In order to bring the cause to a fair trial, the attorney for the United States, at the preceding court, filed a suggestion, stating that the vessel had, in a foreign port, bona fide, become the property of the French Republick. I have now to request, sir, that if you have any documents or testimony to support that suggestion, you will be pleased to communicate the same to me, to be put into the hands of the attorney of the United States; or that you would instruct the legal counsel, whom you employ for the French Republick, to make the proper use of those documents and testimony, to substantiate the claim of the Republick to the *Cassius*.

The informants, by whom the prosecution was commenced, will probably press for a trial at this term.

I have the honour to be, &c.

TIMOTHY PICKERING.

No. 96.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 2d Floreal, 4th year of the French Republick, one and indivisible, (22d April, 1796, O. S.)

SIR,—You requested by your letter of the 15th of April a communication of documents or testimony relative to the purchase by the French Republick of the corvette *le Cassius*.

The French Republick has not to prove its contracts to foreign courts; I had the honour, sir, in the correspondence which took place between us, on the subject of this affair, to declare to you that I knew no relations but with the Executive of the United States, and that whatever were their interior regulations, I could not and should not address myself but to it in every case for which our reciprocal treaties and conventions have not pointed out a recourse to a particular authority.

The arrest of a state vessel is one of those for which I should address myself only to the American government; the only fact to be proved is that of the property, and to establish that, sir, my declaration should suffice. The dignity of nations does not permit their good faith to be brought into question.

I have therefore upon the principle of the arrestation of the *Cassius* furnished a certificate stating that she was French property and a state vessel. This certificate is probably among the documents of the prosecution carried on by the government of the United States, on account of the abandonment which I made to it of the *Cassius*, under the reservation of the right to her.

However, to comply with your desire, I have the honour to send you a second more explicit than the former, of which you will make what use you may think proper.

Accept, sir, the assurance of my respect,

P. A. ADÉT.

No. 97.

The French Republick. The Minister Plenipotentiary of the French Republick, near the United States of America.

DECLARES to all whom it may concern, that the corvette *le Cassius* was a corvette of war belonging to the Republick of France; that she was sent to him as such by general Laveaux, governour of St. Domingo; that she was commanded by an officer of the national marine, charged with a particular mission to him, which the arrest of this corvette has interrupted; in a word, that the crew of the said corvette was composed of mariners in the service of the Republick, and her marines composed of soldiers and officers of the national army.

Done at Philadelphia, under the seal of the Legation, [L.S.] the 2d Floreal, 4 year of the French Republick, one and indivisible (22 April, 1796, O. S.)

P. A. ADET.

By the Minister,

BRUNET.

No. 98.

From Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, April 25, 1796.

SIR,—I duly received your letter and certificate relative to the property of the armed vessel *le Cassius* being in the French Republick, and have handed the same to the attorney of the United States for the district of Pennsylvania, who has the affair under his management. But he deems it material to obviate the pleas of the prosecutors, to ascertain *the time when she became the property of the Republick*. If you have any evidence or document to ascertain this fact, I pray you will have the goodness to furnish me with it, as expeditiously as possible. The court will then have before it all the proofs requisite to govern its decision: although what this will be, whether of condemnation or acquittal, I cannot undertake to judge.

I have the honour to be, &c.

TIMOTHY PICKERING.

No. 99.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States of America, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 6 Floreal, 4th year of the French Republic, one and indivisible (the 25 April, 1796, O. S.)

SIR,—In consequence of your letter of the 25th of April, I have the honour to address to you a certificate of the date of the purchase of the *corvette le Cassius* by the French Republick.

Accept, sir, the assurance of my respect,
P. A. ADET.

No. 100.

Republic of France.

THE minister plenipotentiary of the French Republick near the United States—Declares that the *corvette le Cassius*, belonging to the state, became the property of the French Republick by a bill of sale dated the 19 Pluviose in the 3 year.

Done and sealed at Philadelphia the 6 Floreal, 4th [L.S.] year of the French Republick, one and indivisible.
P. A. ADET.

By the Minister,

BRUNET.

No. 101.

From the Secretary of State to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, June 3, 1796.

SIR,—I have to regret that the fate of the armed vessel *Les Jumeaux*, now called *Le Cassius*, is still in suspense. I requested the attorney of the United States, Mr. Rawle, to whom the cause had been committed, to inform me of its present situation. This appears in his letter of the 28th ult. a copy of which I have now the honour to enclose.

Permit me to refer you particularly to the last paragraph of that letter, by which you will see it is plainly understood to be the sense of the court, That the regular course of legal investigation not admitting the official certificates with which you were pleased to furnish me as conclusive proof of the property of the Cassius, will require further evidence in another form.

I am very respectfully, sir, &c.

TIMOTHY PICKERING.

No. 102.

From William Rawle to the Secretary of State.

SIR,—As soon as I received the supplemental certificate of the French minister, which was not till the 26th of April, I gave notice in court that before the session ended I should move to have the prayer of my suggestion granted and the information dismissed.

A jury trial then before the court prevented any thing else being done until the 29th, when the counsel for the informant against the Cassius mentioned that they would on the following day come forward.

This was then done by requiring me to show the foundation of my suggestion.

I produced part of the correspondence between you and Mr. Adet, and the two certificates of that minister.

It was urged by the informant's counsel, that the same proof was necessary to authorize receiving a suggestion as would be to support it on a trial, and that as such certificates would not be received in that case, so they ought not now to be admitted.

But the court observed that much less was sufficient in one case than in the other.

A regular motion was then made by the informant's counsel, that my suggestion should be dismissed; this I declared myself ready to argue with them immediately, but as we were now at the close of the session, it appeared to the court impossible to get through the business, and it was therefore unavoidably continued till next October.

It appeared however so plainly to be the sense of the court that further evidence as to the property of the Cassius would be necessary on a trial of the facts, that I

scarcely expect, with the aid of those two certificates only, to succeed. I have the honour to be, &c.

W. RAWLE.

May 28, 1796.

No. 103.

TRANSLATION.

The Minister Plenipotentiary of the French Republick near the United States of America, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 15th Prairial, 4th year of the French Republick, one and indivisible (3 June, 1796, O. S.)

SIR,—By abandoning the corvette *Le Cassius* to the United States as I have done, the French Republick is become absolutely unconnected in the suit prosecuted on account of her seizure.

Before this abandonment, I complained to the federal Executive, whom I alone can and should know, against the illegal arrest of a vessel of war of the Republick.

The letter written to my predecessor by the Secretary of State on the 17th November, 1794, on the subject of the *Favourite*, recognised a principle, according to which I should flatter myself that you would cause this attack by a court, whose forms and authority cannot extend to the French Republick, to cease.

The justice you rendered in the affair of the *Favourite* leads me to think that if I have not received it in the case of the *Cassius*, it doubtless arises from the effect of some circumstances which changed your situation: I am not to examine them, sir, and it was for that reason, that upon your refusal, I abandoned the vessel.

Now this affair is become yours, I shall give no other answer to the communication you have thought proper to make as to her situation, than that a vessel of war never was navigated with any other vouchers than the captain's commission and the roll of the crew, that no other proof has ever been required for establishing the ownership.

Whether she was purchased or built on account of a state; or was taken from an enemy, or in fine acquired in any manner whatever, she becomes a publick vessel when manned by mariners commissioned by the state.

But what I have the honour of saying to you in this respect you know, sir, as well as myself, and notwithstanding the desire of doing what may be agreeable to you, I cannot derogate from the rights of my nation by furnishing other proofs than those which have been given, the captain's commission and my certificate, which was also supererogatory.

I notify you, sir, that the minister for foreign affairs has ordered me to ascertain with you the *reparation for the injuries and damages arising from the proceedings you have ordered or permitted with respect to this corvette*; but I defer treating on this point of right until I shall have received new orders from my government in virtue of the abandonment I made to you of this vessel, which they could not have learned until a few days after the departure of my first directions. Accept, sir, &c.

P. A. ADET.

No. 104.

The Secretary of State to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, Oct. 19, 1796.

SIR,—The marshal of the district of Pennsylvania has just produced to me a transcript from the minutes of the circuit court of its proceedings in the case of the ship *Cassius*, on the information of John Ketland against her. The court on the 15th instant “ordered that the information be dismissed,” it appearing to the court that they had no jurisdiction.

The ship remains at present in the custody of the marshal, but ready to be delivered to your order.

I have the honour to be, &c.

TIMOTHY PICKERING.

No. 105.

Case of Le Cassius.

In pursuance of the request of the Secretary of State, the attorney for the district of Pennsylvania has the honour

to return the following statement, which he hopes will be found correct.

The case of the *Cassius*, although selected by Mr. Adet as one of his grounds of complaint against the government of the United States, forms a striking instance of friendly inclination towards the French Republick, tempered with a necessary adherence to the obligations of neutrality.

The ship *Cassius* arrived at the port of Philadelphia the 4th of August, 1795, from Port de Paix, and as a publick ship of war an account of her force was given to the customhouse officers, agreeably to the usual practice.

On the 5th of August Mr. James Yard, a native American citizen and merchant of Philadelphia, filed a libel against her, in the district court of Pennsylvania, and prayed process of attachment against the vessel, and of arrest against the captain.

The libel stated, that a schooner called the *William Lindsay*, with a cargo on board, both belonging to the libellant, were captured on a voyage from the island of St. Thomas to the city of St. Domingo, in the island of Hispaniola, by the *Cassius*, under the command of Samuel B. Davis, who pretended an authority from the French Republick, but really was a citizen of the United States—that the said schooner was carried into Port de Paix, and there wrongfully detained, without compensation to the libellant, and that the *Cassius* had been illegally fitted out from the port of Philadelphia.

In consequence of this application, the vessel was attached, and the captain arrested by the marshal.

Before the return of the process Mr. Adet wrote a letter to Mr. Randolph, then Secretary of State (dated 22d Thermidor, 3d year of the Republick, answering to the 9th of August) complaining of the detention and arrest—referring to the 15th and 19th articles of the treaty with France, and requesting the Secretary of State, 1st. To take the necessary measures to restore the captain to his liberty, and release the vessel; and 2d, to cause the complaint to be referred to the French government, which would repair the injury if the captain had acted without orders.

About the same time, complaints were made on the part of the British resident, earnestly urging that the *Cassius*

having been, as alleged, illegally fitted out, should be detained, and that government would enforce the laws against both the vessel and the captain, as an American citizen holding a commission under one of the belligerent powers. On these opposing pretensions, the attorney of the district of Pennsylvania was personally consulted by Mr. Randolph. It became obviously necessary to determine, in the first place, and as speedily as possible, what the law required, before the political obligations which might arise from the occasion could be considered. It appeared to the district attorney that if the French government had made a fair and unsuspecting acquisition of the property of a vessel then lying in their own ports and out of the reach of the jurisdiction of the United States, a cause of forfeiture previously existing, but unknown at the time of the purchase, could not at a future day revive so as to subject the same vessel, still remaining the property of a sovereign nation, to the process of our courts."* "Penal laws are strictly local, and affect only what they can reach." The change of property in a foreign country is therefore valid. Without interfering with the question of the effect of a purchase by an individual, the right acquired by a foreign sovereign appears, on the principles of national policy, to be superior to the pre-existing right of forfeiture.

One sovereign is not amenable to the tribunals of another.

What cannot be done directly, ought not to be done indirectly.

Process of information and seizure indirectly brings the sovereign to submit to the tribunal, or to abandon the property. There is indeed little difference between the direct and indirect mode of effectuating this event, since an attachment of some moveable article must be, in general, the mode of compelling the appearance of a foreign sovereign. Inconceivable evils would result from the allowance of the first experiment. An imprudent individual might at least endeavour to detain a whole squadron by process which it would be fortunate if it only exposed the judicial authority to ridicule and did not involve our coun-

Dallas, p. Camp vs. Lockwood, Cowp. 343. Huberus, vol. ii. 532.

try in hostilities.* In respect to the charge against captain Davis, the district attorney was of opinion, that an acceptance and exercise of a foreign commission, within the territory and jurisdiction of the United States, were necessary to constitute an offence within the act of Congress entitled an Act in addition to the Act for punishing certain crimes and offences against the United States. That although by coming into the port of Philadelphia, with the command of the *Cassius*, the exercise of the commission was complete; yet the acceptance of it appearing to have taken place in a foreign country, he could not be deemed liable to prosecution.

The former of these opinions being verbally communicated to Mr. Randolph, produced a request on his part that the speediest method for obtaining a decision of the question should be adopted.

In the mean time some propositions for an amicable adjustment of the complaint of Mr. Yard afforded a prospect of another termination of the controversy; but these failing, the district attorney, in obedience to his instructions, prepared a suggestion to the district court, a copy of which will be found in the annexed exemplification of the record, and which he exhibited in court on the twenty-first of August, where it was received and filed.

This mode of proceeding, being somewhat novel, may require an explanation.

The French minister disclaimed the jurisdiction of the court, and called, as it appeared, with no very clear conception of the constitutional powers of the Executive, for a direct interference to annul the judicial proceedings.

A claim in the name and behalf of the French nation or a plea in the same name and behalf to the jurisdiction of the court would have been consistent with the technical forms of proceeding: But the district attorney had no authority to use their name—he had no warrant of attorney to produce from them, if required. The United States,

* This train of reasoning was supported by the authorities of Vattel *prelimin. S. 13. S. 20 Vattel C. 2 S. 36. Burlamaq. C. 9. Vol. i. p. 69. Dallas p. Nathan vs. Virginia, &c.*

And slightly opposed by Martens and Bynkershoek—*Martens b. i. S. 3—Bynk. de foro legatorum C. IV.*

On the operation of forfeiture by penal laws—See Henry Blackstone's Reports 135—5 Term Repts. 112. 1 Term Repts. 260.

however, had an interest in the question, and recurring to authorities* where the interests of third persons had been effectually brought before even courts of common law, he ventured as a more solemn form of motion, to state to a court of admiralty and fiscal jurisdiction the interests which he represented and the objections he had to urge, in the form above mentioned. On the same day a plea to the jurisdiction of the court was filed in the name of Samuel B. Davis, by counsel employed for him. The intention of doing this had not been communicated, or the suggestion would have been deemed unnecessary; but as far from interfering with, they tended to support each other,—both the plea and the suggestion remained upon the files of the court, in course to be answered on the next court day.

In the mean time, the counsel employed for captain Davis applied to the supreme court of the United States, then in session, for a prohibition to the district court; which was granted upon principles which will be found to coincide with those which had directed the conduct of the district attorney in the outset; a short statement of which is contained in the writ of prohibition making part of the record annexed,—and thus the proceedings in the district court were terminated. In reviewing the case to this point, it obviously appears that the conduct of government was friendly and consistent—that the obligations of the treaty with France were faithfully obeyed, by taking every constitutional method, in aid of the requisitions of the French minister, that the occasion could reasonably admit, without evasion or delay, and that nothing but the existence of a controlling power over the courts of justice, wisely excluded from our constitution, although it seems to be supposed in the complaint, could produce further exertions.

The business now assumed a new aspect. On the twenty-fourth August, Mr. John Ketland, a citizen of the United States, filed an information in the circuit court, founded upon the act of fifth June, 1794, entitled, an act in addition to the act for the punishment of certain crimes against the United States; and having made oath to the truth of his allegations before one of the judges of the su-

* Lord Hardwicke 237. Cowp. 734, and instances of modern practice.

preme court, obtained an order to attach the *Cassius*. It is scarcely necessary to observe that the government of the United States had no share in this transaction. Where a forfeiture is given by law, as in the present instance to be appropriated one half to the informer and the other half to the publick, any individual has a legal right to commence the proceedings and receive the benefit. The publick has no control over it and can by no act legally impede or defeat the suit. The moiety due upon conviction to the publick may be remitted, but the moiety due to the informer is subject only to his own will.

It therefore ensued that the part to be taken by the government of the United States, on this new occurrence, was precisely analogous to that which attended the suit in the district court. And directions were given accordingly.

The attempt to implicate the conduct of the judge of the supreme court, who signed the order to the marshal, evinces a very moderate share of information. To administer the oath and issue the order required, were as precisely his duty as it was to repel the attempt to obtain the liberation of the vessel previous to the meeting of the court at Yorktown.

Mr. Adet on the first of September (not on the first of August as stated in his note) renewed his complaints to the Secretary of State, urging, among other things, that the suit had now been carried to an incompetent tribunal. It certainly was not in course for any other publick officer than the judges of the courts to decide upon the doubtful jurisdiction of the circuit court in this instance.

A judicial system in some respects perfectly new—in the present instance yet untried, required a regular and professional discussion before the point could be determined. Two gentlemen of eminence at the bar, concerned for Mr. Ketland, adopted and supported the jurisdiction of the circuit court for the present proceeding.

The order from the judge, the official powers of the marshal, were not to be resisted from a belief or a hope that the jurisdiction would ultimately be found incompetent.

An application on the part of the French minister to the executive authority to cause security to be given for the *Cassius*, to enable her to proceed upon her voyage, was on consideration rejected: because if it should afterwards

be made to appear that the ship had been illegally fitted out in a port of the United States, other nations who might suffer by her warlike operations would have just cause to claim a compensation from the United States, and this independent of the ground already stated in considering the subject of forfeiture; because the request was believed to be without a precedent; and because it would in effect have been assuming the judicial power of determining on the important questions in view. The executive power was therefore restrained from affording further aid to the efforts of Mr. Adet until the court should meet at Yorktown, on the 11th October. On the 27 September, Mr. Adet thought proper formally to signify to the Secretary of State that he had caused the *Cassius* to be dismantled, and abandoned her to the government of the United States.

From this time therefore the particular motives to urgency on account of the mission with which the *Cassius* was said to be charged seemed to have ceased. But the efforts to obtain a dismission of the suit were not on that account relaxed.

At the meeting of the circuit court at Yorktown, the district attorney filed a suggestion similar to that used in the district court.

The multiplicity of criminal business prevented his obtaining a decision, but it had the effect of suspending the progress of the information. The cause was necessarily continued till April session of 1796.

A letter from the district attorney to the Secretary of State, dated May 28th, 1796, relates the proceedings of that April session, which were somewhat delayed by a reluctance on the part of Mr. Adet to furnish sufficient documents to establish the property of the *Cassius*. A copy of the letter, as a proper continuance of the narrative, is here inserted, viz.

No. 106.

SIR,—As soon as I received the supplemental certificates of the French minister, which was not till the 26th of April, I gave notice in court that before the session ended I should move to have the prayer of my suggestion granted and the information dismissed.

A jury trial then before the court prevented any thing else being done until the 29th, when the informant's counsel mentioned that they would on the following day come forward. This was then done by requesting me to show the foundation of my suggestion—I produced part of the correspondence between you and Mr. Adet, and the two certificates of that minister. It was urged by the informant's counsel that the same proof was necessary to authorize the receiving a suggestion as would be to support it on a trial, and that as such certificates would not be receivable in that case, so they ought not now to be received. But the court observed that much less was sufficient in one case than in the other. The informant's counsel then moved that my suggestion be dismissed—this I declared myself ready to argue with them; but as we were now at the close of the session it appeared to the court impossible to go through the business—and it was therefore unavoidably continued till next October. It appeared, however, so plainly to be the sense of the court, that further evidence as to the property of the Cassius would be necessary on a trial of the facts, that I scarcely expect, with the aid of those two certificates only, to succeed. I am, &c.

May 28, 1796.

In October following the district attorney renewed his efforts to obtain a hearing with more success. In the course of the argument the question of jurisdiction presented itself. The court adjourned till the next day for the purpose of fully considering it, and on the following morning dismissed the suit.

W. RAWLE.

December 21, 1796.

No. 107.

Abridgment of the Writ of Prohibition, directed to the District Court of the United States in and for the Pennsylvania District.

THE prohibition recites, that by the law of nations and the treaties between the United States and France, the trial of prizes taken without the jurisdiction of the United States and brought into the jurisdiction of France, for ad-

judication, by the vessels of war of the latter, and all questions incidental to it, belong exclusively to the judiciary establishments of the latter; that consequently its vessels of war and their officers are not liable to process of our courts predicated upon such capture and bringing into port; that particularly the jurisdiction of such causes does not belong to the district courts of the United States; that for such capture and bringing into their own ports, of neutral ships, to answer for any breach of the law of nations concerning the navigation of neutrals, the said vessels of war and their officers are only accountable to the sovereign under whose authority their commission is held; that on the 20th May, 1795, Samuel B. Davis was a lieutenant of ships in the French navy and commander of the corvette called the *Cassius*, having a lawful commission; that James Yard of the city of Philadelphia merchant had caused the said Davis and the said corvette to be arrested to answer to his libel against them filed in the district court of the United States for the district of Pennsylvania, in which he alleged, that on the said 20th of May, the said Davis, with the said corvette and as her commander, had captured on the high seas a schooner belonging to the said Yard, called the *William Lindsay*, and carried her to Port de Paix where she then remained; that the *Cassius* had been originally equipped for war in the port of Philadelphia, and that Davis, at the time of said capture, and then, was a citizen of the United States, but without alleging, that the said capture had been made within a marine league of the coast of the United States, or that the *Cassius* had been equipped for war in the United States with the privity of the French Republick, or by the said Davis, or that at the time of her being so equipped (if she ever was) she was the property of the Republick, or that the said Davis was any how concerned in such equipment, and without alleging that he was retained in the service of the Republick within the jurisdiction of the United States: the writ therefore prohibits the judge from further proceedings and commands him to release said Davis and the *Cassius* without delay. It is tested on the 24th August, 1795.

No. 107.

Suggestion of the Attorney of the United States for the Pennsylvania District, and the plea of Samuel B. Davis to the jurisdiction of the District Court for the said District.

AND afterwards, to wit, on the 21st day of August aforesaid, William Rawle, Esq. attorney of the United States in and for the Pennsylvania district, who acts for the said United States in this behalf, in his proper person comes into this court, and for the said United States gives the court to understand and be informed, that the said ship, called the *Cassius*, was on the said 20th day of May, in the year aforesaid, being the time, when the said libellant charges that the said schooner *William Lindsay* was taken and detained in manner by him alleged, and also at the time of her being arrested and attached by the marshal of the district aforesaid at the suit of the said libellant and now is the property of and belonging to the French Republick, a sovereign nation, in peace, amity and alliance with the said United States, and this he is ready, and offers to verify: wherefore the said ship the *Cassius*, so being the property of and belonging to the French Republick, cannot by law be rendered liable to civil process in the courts of the United States, at the suit of individuals; and the said United States, being answerable to foreign nations for the due observance of treaties with them subsisting and of the principles and usages of the laws of nations in respect to ships and other property to such nations belonging and unduly seized, arrested or attached under colour of legal process within the territory of the said United States, and the peace and interests of the United States being deeply involved therein, the said attorney acting in the behalf aforesaid, prays this honourable court, that the said ship the *Cassius* may, by the sentence and decree of this honourable court, be released and discharged from the attachment and arrest aforesaid, and that the said libel, so far as the same relates to the said ship the *Cassius*, may be dismissed with such costs and damages as the court may adjudge for her said wrongful arrest and attachment.

And the aforesaid Samuel B. Davis by force of the process of this honourable court in the said court being, and

not acknowledging the jurisdiction thereof in the instance now pending, exhibits to this honourable court with all due respect a certificate under the hand of citizen Adet, minister plenipotentiary of the French Republick to the United States, dated the 27th Thermidor, to wit, the 14th of August, instant, certifying that the said corvette the *Cassius* is a vessel of war of the French Republick, and that the said Samuel B. Davis is a commissioned officer in the navy of the said Republick, also a commission or order of Etienne Laveaux, governour of the island of St. Domingo, attested to be lawful and authentick under the hand and seal of the said minister of the French Republick, which said commission or order is dated the 22d Pluviose, to wit, on the 10th of February last, recorded in the registry of the French marine at Port de Paix, the 9th Floreal, to wit, the 28th of April following, directed to him the said Samuel B. Davis, lieutenant in the navy of France, commander of the said corvette of the French Republick, the *Cassius*, authorizing him to cruise with the said corvette for two months at least against the enemies of the French Republick, and to take their ships and property on the high seas, together with true copies and translations of the said exhibits, which copies and translations being duly compared with the originals now exhibited, he prays may be filed and remain among the acts of court: whereupon he prays and respectfully moves this honourable court, that any thing in the libel of the said James Yard contained notwithstanding (he nevertheless not confessing or in any wise acknowledging the same) the said corvette the *Cassius* and the said Samuel B. Davis may be discharged from arrest.

No. 108.

TRANSLATION.

Joseph Fauchet, Minister Plenipotentiary of the French Republick, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 16th Prairial, 2d year of the French Republick, one and indivisible, (June 4, 1794.)

SIR,—I have already had the pleasure to inform you, verbally, of the interest which the committee of publick safety of the National Convention had taken in due sea-

son in the truly unhappy situation of your commerce in the Mediterranean. I now fulfil the duty imposed on me by the government, by calling to your recollection in writing, the steps which are to be taken by our agent with the Dey of Algiers, for repressing this new manœuvre of the British administration which has put the finishing stroke to its proofs of malevolence towards free people. The despatch of the minister communicating this measure to me, is dated the 5th of January, and did not come to my hands till fifteen days ago. I do not yet know by what route; I could have wished it had been less tardy in coming to me, that I might sooner have fulfilled the agreeable task of proving to you by facts the protestations of friendship of which I have so often spoken in the name of the Republic of France.

The information which I shall receive from Europe in a little time, will doubtless possess me of the success of those negotiations which were to have been opened in January last. If the situation of your affairs is yet such with respect to that barbarous regency as that our intervention may be of some utility, I pray you to invite the President to cause to be communicated to me the means that he will join to those of the committee of publick safety, for the greatest success of the measures already taken. It is in virtue of the express request of the minister that I solicit of the President some communication on this subject: I shall be satisfied to be able to transmit it by a very early conveyance which I am now preparing for France. Accept my esteem,

JH. FAUCHET.

No. 109.

Mr. Randolph, Secretary of State, to Mr. Fauchet, Minister Plenipotentiary of the French Republic. Department of State, June 6, 1794.

SIR,—The letter which you did me the honour of writing to me yesterday, has been laid before the President of the United States; who accepts with pleasure such a testimony of your attention, and whose sentiments upon the great subject of your revolution can never be doubted.

Your other letter of the 4th of June is a powerful demonstration of the interest, which the Republick of France takes in our welfare. I will frankly communicate to you our measures and expectations, with regard to Algiers; but as you will so soon receive the detail of those measures, which your government have pursued in our behalf; and after the rising of Congress some new arrangements will probably be adopted by the Executive; it will be better perhaps to postpone our interview on this matter until the intelligence which you further expect, shall arrive. I have the honour, sir, to be, &c.

EDM. RANDOLPH.

No. 110.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 12th Messidor, 3d year of the French Republick, one and indivisible, (30th June, 1795, O. S.)

SIR,—I herewith enclose to you a literal copy of the part of my instructions relative to a new commercial treaty, and a new consular convention to be entered into between France and the United States.

Honesty, justice, the interest of the two nations, and the most exact reciprocity, are the basis which the French Republick adopts in her treaties of friendship. Be pleased to assure the President, that I shall be too happy if I can contribute to tighten the bands which unite the French Republick to the United States, and to assure the happiness of both. Accept, &c.

P. A. ADET.

No. 111.

Extract from the instructions given to P. A. Adet, Minister Plenipotentiary of the French Republick near the United States of America, by the committee of publick safety of the National Convention, charged by the law of the 7th Fructidor, 2d year, with the direction of foreign affairs.

“THE minister shall prepare with the American government the means and arrangement of a new consular con-

vention, and of a new commercial treaty, and he shall communicate his negotiation on this subject to the committee of publick safety. This negotiation shall be built upon the different decrees of the National Convention passed on this subject. The object of the new treaty shall be to found the commercial relations of the two republicks upon stipulations more reciprocally advantageous and more clearly worded than that of 1778, and the object of the consular convention to assure the full and complete execution of this treaty."

True extract from my original instructions.

Philadelphia, the 12th Messidor, 3d year of the French Republick.

The minister of the French Republick near the United States of America.

P. A. ADET.

No. 112.

Mr. Randolph, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, July 1, 1795.

SIR,—I had the honour of receiving your letter of yesterday, covering an extract from your instructions, relative to a new treaty of commerce, and a new consular convention. Even before we are fully informed of the extent of the different decrees of the National Convention upon which your propositions are to be founded, I do not hesitate to declare to you our readiness to open a negotiation with you upon these two subjects. It would seem from your instructions, that you have no power to conclude or sign any new compact. If I misjudge the nature of your authority, you will be pleased to correct me.

I must also beg the favour of you to communicate to me the dates of those decrees, to which your instructions refer. Perhaps I may be possessed of the whole or most of them. In that case, copies will be asked of none, but those which are not in the office of this department.

Your answer to this letter will enable me to offer to your consideration some arrangements, which may facilitate the discussions.

Permit me, however, to request, on this first opportunity of business, that when you give the dates of the French

calendar, you will be so obliging as to add the dates of our own. Experience has shown that mistakes and delays have arisen in our office from the want of familiarity with the French calendar.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 113.

Mr. Randolph, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, July 12, 1795.

SIR,—It is with great reluctance that I trouble you so often upon the same subject. I cannot entertain a doubt, that, but for your indisposition, you would before now have answered my letter, on the new negotiation, as you were obliging enough to promise me in conversation several times. But the President intending to leave this city on Tuesday morning, and it being requisite, as I have had the honour of stating to you, that I should receive his instructions before his departure, I will thank you to enable me to present to him the subject of our negotiation as fully as your overtures will permit. If I discover some anxiety, I beg you to impute it to the hope that this business will result in our mutual honour, by proving that, while we each labour for the interest of our respective nations, we can promote the prosperity of both.

I have the honour to be, &c.

EDM. RANDOLPH.

No. 114.

TRANSLATION.

24th Messidor, 3d Republican year, July 12, 1795, O. S.

P. A. ADET presents his compliments to Mr. Randolph, and sends him the letter which he should have addressed to him some days ago, if the fever he is afflicted with had permitted him to attend to business. Mr. Randolph will find with that letter a part of P. A. Adet's instructions relative to the articles of the treaty which the French govern-

ment has instructed him to stipulate positively—the other articles, founded on reciprocal advantages, are left to the course of the negotiation which is to establish them.

P. A. Adet will have the honour of seeing Mr. Randolph as soon as his health will permit.

No. 115.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States of America, to Mr. Randolph, Secretary of State of the United States. 20th Messidor, 3d year of the French Republick, one and indivisible, (8th July, 1795, O. S.)

SIR,—I have received the letter you did me the honour to write to me dated the 1st July. I have never doubted the attachment of the United States for the French Republick, and the reply you made to my letter of the 30th June is a proof of it. You request of me, in that letter, some information, which I hasten to give you.

I neither know nor possess any other decree relative to the new negotiation to be opened between France and the United States than that of the *5th of February, 1793, communicated to you by citizen Genet; and as it must be in the office of your department, I conceive it will be useless for me to send it.

My instructions empower me to prepare the plans of a new consular convention, and of a new commercial treaty. After my government and that of the United States shall have approved of the plans, the sending of full powers for the signature is but a formality which is easily fulfilled. This step appeared proper, to avoid a number of inconveniences at the time of the ratification of the treaty.

I will fulfil the desire expressed in the last paragraph of your letter, and shall take care to add in all my despatches the date of your calendar to that of the French.

Accept, sir, &c.

P. A. ADET.

* This should have been 19.

No. 116.

TRANSLATION.

Extract from the Instructions given by the French Government to Citizen Adet.

THE minister plenipotentiary shall stipulate positively and without reserve the reciprocal exemption from the tonnage duty so necessary to our mercantile marine. This exemption, implicitly assured in the ports of the United States by the 4th and 5th articles of our commercial treaty, has never been executed therein, and since the organization of their customs a very burdensome tonnage duty has been rigorously exacted on our merchant vessels: even in 1793, a severity and an injustice were used, which the American government should not have suffered. But the respective naturalization of the French and American citizens, proposed by Mr. Jefferson, and desired by the French nation, will facilitate this stipulation of a reciprocal exemption from tonnage, and render it less offensive to the powers who, in virtue of treaties, might claim a participation in the same advantages: As the *casus fœderis* would by this stipulation be changed in this respect.

No. 117.

From the Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State. July 13, 1795.

SIR,—I understand by the letter which I had the honour of receiving from you in the evening of yesterday, that “your instructions give you power only to *prepare* the draught of a new consular convention, and a new treaty of commerce.” Notwithstanding the formality of this procedure, the President of the United States has directed me to meet you.

But I am prevented, sir, from proposing to you a time, place, and arrangement for our conversations, by a fear of incommoding you in your present indisposition. Permit me therefore to expect, that as soon as your health will suffer you to attend to this subject, you will be so good as to inform me. I have the honour to be, &c.

EDM. RANDOLPH.

No. 113.

Mr. Randolph, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, July 16, 1795.

SIR,—After acknowledging your letter of the 14th inst.* which I had the honour of receiving yesterday, I take the liberty of proposing the following plan of procedure in the discussions now commencing between us.

As you are not clothed with any very formal authority upon this subject, the President of the United States has thought it proper to place me upon the same and no other footing. Hence we are both to be considered as committees, delivering our own sentiments to each other, and after comparing them, reporting our opinions to our respective governments; which by these means will remain mutually uncompromitted, until the system is modified so as to meet their approbation.

So various and weighty is the business which now presses upon my attention, that I could not rely upon my own memory, nor upon my own accuracy, were not the interchange of our thoughts to be made on paper. I beg leave, therefore, to suggest, that we conduct the discussion in this way, except when it shall appear to either of us more expedient to have an interview on some particular difficulty. Our letters shall constitute no part of a formal report to our governments; and shall be liable to be recalled, or changed, as each party pleases; unless on the close of the transaction we shall agree to annex them to any draught which may be prepared.

Assuring you, then, that no unnecessary procrastination shall be found in me, I submit to your consideration this arrangement: 1st. That you state the parts of the subsisting treaty which you wish to be *abolished*: 2d. Those parts which you wish to be *corrected*: and 3d. *any additions* which seem to you desirable. These may be examined either separately or conjointly, as shall be most agreeable to you; and if you prefer stating one class at a time, I shall

* This letter of the 14th, has no relation to the proposed negotiation.

not object. Indeed if any other arrangement shall strike you more favourably, I have too little predilection for my own, to hesitate at the adoption of a better.

This transaction is so momentous, that too much time cannot be well spent upon it; and it will facilitate my other duties could I enter into it so early as to afford full opportunity for reflection.

I have the honour to be, &c.

EDMUND RANDOLPH.

No. 119.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, 2d Messidor, 3d year of the French Republic, one and indivisible, 20th June, 1795.

SIR.—On the 6th, I received the letter of that date which you addressed to me, in answer to the observations I made to you on the treaty proposed between the United States and Great Britain. I should have replied to you sooner, had not my health, which has always been unstable since my arrival in this country, obliged me to abstain from business for upwards of fifteen days—I shall transmit it to the French government together with my observations and the treaty. In such important circumstances, it is exclusively the province of my government to judge, and I cannot permit myself to decide at all.

In a few days I shall have the honour of seeing you, and of taking the necessary measures in order to commence the business relative to the digesting of the new treaty, and new consular convention.

Accept, sir, &c.

P. A. ADET.

No. 120.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Randolph, Secretary of State of the United States. Philadelphia, the 26 Messidor, 3d year of the French Republic, one and indivisible, (14th July, 1795, O. S.)

SIR,—I have the honour to transmit to you an official decree of the committee of publick safety of the 14th Nivose, in the 3d year of the French Republic, which you have seen in the newspapers, and which you communicated to my predecessor, citizen Fauchet, in your letter of the 14th of last Nivose.

This decree revokes the 5th article of that of 25th Brumaire in the same year, a copy of which I have also the honour to transmit to you.

You will see, sir, in both the undisguised disposition and sincere desire of the French government religiously to observe the engagements it has contracted with its allies, and its readiness to redress infractions which have never taken place but from the impulse of circumstances.

That of the 14th Nivose will convince you particularly of the purity of motives and respect for principles which animate the National Convention and its committees. It was not produced by representations from the neutral governments or their subjects; but the result of a rigid examination of the extent of our contracts with our allies.

By this article, the merchandises belonging to powers at enmity with the French Republic, laden on board of neutral vessels, are declared free.

It is amidst her triumphs that the Republic loves to give this striking mark of her fidelity. Victorious France knows no other concern than that of justice—no other diplomatic language than that of truth.

As for myself, sir, who have the honour of representing her near your government, I esteem myself happy in having the superintendence of the execution of these measures of justice; and if, contrary to my expectation, they should experience any violations by the vessels which come near

your latitudes, you will see me anticipate your complaints by honestly probing them to the bottom, and redressing them with a zeal equal to that with which you might be animated yourself.

Accept, sir, &c.

P. A. ADET.

No. 121.

TRANSLATION.

Extract from the Register of the Decrees of the Committee of Publick Safety of the National Convention, of the 14th Nivose, 3d year of the French Republick, one and indivisible.

THE committee of publick safety, considering that the 23d article of the treaty of commerce between France and the United States of America, of the 6th of February, 1778, stipulates formally—

1st. That the French and Americans may navigate in full security with their vessels, without any exception being made on account of the proprietors of the merchandises laden in those vessels, from whatsoever port they come, and although the power for which they are destined, is, or may be an enemy of the contracting nations: that they may in like manner navigate in full security with their vessels and merchandises, and frequent the places, ports and harbours of powers enemies of the two contracting nations, or of one of them, and carry on commerce not only from an enemy's to a neutral port, but also from one enemy's port to another.

2d. That free vessels shall make free goods; and every thing which shall be found on board of vessels belonging to the citizens of one of the contracting nations shall be judged free, if even the lading should belong in whole or in part to the enemies of either; contraband articles being always excepted.

3d. That this same freedom shall be extended to the persons who may be on board of the free vessels, should they even be enemies of one of the two contracting nations; and that consequently those persons cannot be taken from on board of such vessels unless they be military

characters, and actually in the service of the enemy:— Considering that the crimes of England have given to the war of despotism against liberty, a character of injustice and atrocity unexampled in history, the National Convention found itself obliged, in using the right of reprisal, to decree on the 9th of May, 1793, that vessels of war and French privateers should arrest and conduct into the ports of the Republick, the neutral vessels which should be found laden in whole or in part, either with produce belonging to neutral nations, and destined for enemies ports, or with merchandises the property of enemies: but that soon after, on the first of July, 1793, the National Convention hastened to re-establish, in all their vigour, the dispositions above recited of the treaty, of the 6th of February, 1778; that in fact it has been revoked by that of the 27th of the same month, so far as relates to the produce and merchandises belonging to enemy powers: that thus it remains free for produce and merchandises the property of neutral powers with regard to which the French government have not to blush for having delayed to show its justice and honesty, until the cabinet of London revoked as they have done a considerable time after, the order issued by them during the preceding year, for seizing every neutral vessel carrying produce or merchandises of neutral nations to France.

Considering that since, and notwithstanding the affectation with which that cabinet continues daily to insult the rights of nations, and to violate the neutrality of non-belligerent powers in causing to be seized their vessels laden with merchandises destined for France, the National Convention enjoined by the 7th article of the law of the 13th of this month all the agents of the Republick, all the commandants of the armed forces, and all officers civil and military, to cause to be respected and observed, in every particular, the treaties uniting France to the neutral powers of the ancient continent, and to the United States; that by the same article, an infringement of those treaties is forbidden, and that all acts which may be contrary thereto are annulled.

Considering that it is of importance to make known to the world this grand act of honesty and justice and speedily to do away every pretext, which malevolence might employ, either for obstructing or retarding its effect, or

pervverting the same to the prejudice of the Republick—it is decreed,

Art. 1. The colonial and marine commissioners shall notify, without delay, all the commandants of the naval armies, divisions, squadrons, fleets or vessels, of the article of the law, of the 13th of this month, cited above ; and inform them in consequence, that they must regard as null and of no effect the disposition of the 5th article of the decree of the committee of publick safety, of finances, and of commerce and supplies, of the 25 Brumaire last (15th November) which authorized the seizure of merchandises belonging to enemy powers, until they should have declared free and not seizable the French merchandises laden on board of neutral vessels.

Art. 2. Merchandises, even of neutral nations, denominated contraband, or prohibited, shall continue to be liable to seizure.

Art. 3. The articles comprised under the name of prohibited or contraband merchandises, are arms, instruments and warlike stores of whatsoever kind they may be ; horses and their harness, and all kinds of effects, produce or merchandises, destined for an enemy's port, actually besieged, blockaded, or invested.

Art. 4. The commissioners for exterior relations shall transmit the present decree to the agents of the Republick near the allied or neutral governments with orders to communicate it to them.

Art. 5. The present decree shall be inserted in the bulletin of the laws. The members of the committee of publick safety—

Cambaceres,
Merlin, of Doway,
Carnot,
Prieur, of the Marne,
Maree,
A. Dumout,
J. G. Chazal,
Pelet.

The Commissioner of Foreign Affairs, A. F. Miot.
True copy, P. A. ADET.

No. 122.

The following is a Translation of the Fifth Article of the Decree of 25 Brumaire, alluded to in the foregoing. November 15, 1794.

Art. 5. The following are excepted from the prohibition in the preceding article [alluding to art. 4.]

1st. Merchandises belonging to powers enemies of the French Republick, until these powers shall have declared free and not seizable, French merchandises laden on board of neutral vessels.

2d. Also neutral merchandises, denominated contraband or prohibited; under the name of prohibited or contraband merchandises, are included arms, ammunition and warlike instruments, of every kind, provision or merchandise destined for an enemy's port, actually besieged, blockaded or invested.

No. 123.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States of America, to Mr. Pickering, Secretary of the Department of War of the United States, charged with the Department of State. Philadelphia, the 7th Vindemiaire, 4th year of the French Republick, one and indivisible, (28th Sept. 1795, O. S.)

SIR,—The publick papers announce in every quarter, that the English, in contempt of the law of nations, arrest and seize American vessels laden with provisions for the ports of France. Although this fact is not authentically vouched to me, yet I cannot doubt it, since no one has ever contradicted any of the numerous assertions which had any relation to it.

If the interests of my country were not deeply compromised by the measures which the English government has taken with regard to your commerce, I should have remained silent. I know that it is not for me to judge of circumstances in which the glory of the United States, the honour of their flag, the liberty of their commerce,

may be outraged. I know therefore that it is the province of their government alone to decide and to act, and that that government would justly have reason to be hurt at the representations of a foreign minister, from his information and the nature of things, on an object which interested the American nation, or its government alone; but, sir, if at the present juncture the interests of the United States are in question, those of France are also, and I should betray my duty if I were for a moment to forget them.

It is not the first time that the English have given to the world the scandalous spectacle of their contempt for the rights of nations. It is not the first time that the American government has had occasion to complain, and has been apprehensive of seeing their neutrality compromised. So long ago as 1793, the cabinet of St. James ordered the arrestation and seizure of American vessels laden for the ports of France. This conduct which violated every principle, and which injured the interests of the Republick, obliging the convention to imitate it: but its views were very different from those of the British government, as by that means she sought to support, though indirectly, the rights of neutral nations; she ought to be entirely justified by the 5th article of the decree, declaring that it shall cease to have effect when the combined powers shall have acknowledged, agreeably to the law of nations, provisions, found on board of neutral vessels, as not liable to seizure: Although the coalesced powers are far from admitting these principles sacred to every honest government, the national convention has not thought proper longer to follow their example, and the committee of publick safety has exhibited in its arret of the fourteenth last Nivose, its love for justice and the sentiments of France for the United States.

You know, sir, as well as I do, that the war, which exists between two powers, cannot alter in any manner the rights of the United States, who wish to remain at peace; and that their relations with those belligerent powers are the same as before the declaration of war. These conditions constitute the state of neutrality. As soon as the relations change—when one of the belligerent powers is more favoured than another by the state which has not taken part in the war, the neutrality of that state

ceases to exist. If therefore one of the belligerent states seeks to obtain from the neutral nation an advantage not enjoyed by its enemy, the neutral state should, if she wish to remain at peace, oppose its pretensions by all the means in her power, or she should, in order to keep the balance in equilibrium between both enemies, allow them to participate in the same advantages if her interests permit, otherwise that nation would discover a partiality, which cannot accord with the state of neutrality. These are evident truths, and are generally received.

Besides, in every war, neutral nations have armed in defence of their neutrality—and we accordingly see at the present moment, Sweden and Denmark uniting their fleets for the purpose of protecting their commerce and supporting their neutrality—likewise did the United States in 1793 strongly complain against the arrestation of their vessels by the ships of war of the English. Permit me, sir, to cite here, in support of this assertion, the following lines from a letter of Mr. Jefferson to Mr. Pinckney, dated the 7th September, 1793.

“This act, too, tends directly to draw us from the state of peace, in which we are wishing to remain. It is an essential character of neutrality, to furnish no aids (not stipulated by treaty) to one party which we are not equally ready to furnish to the other. If we permit corn to be sent to Great Britain and her friends, we are equally bound to permit it to France. To restrain it would be a partiality which might lead to war with France, and between restraining it ourselves, and permitting her enemies to restrain it unrightfully, is no difference. She would consider this as a mere pretext, of which she would not be the dupe, and on what honourable ground could we otherwise explain it? Thus we should see ourselves plunged by this unauthorized act of Great Britain into a war, with which we meddle not, and which we wish to avoid, if justice to all parties, and from all parties, will enable us to avoid it. In the case, where we found ourselves obliged, by treaty, to withhold from the enemies of France the right of arming in our ports, we thought ourselves in justice bound to withhold the same right from France also, and we did it. Were we to withhold from her supplies of provisions, we should in like manner, be bound to withhold them from her enemies also, and thus

shut to ourselves all the ports of Europe, where corn is in demand, or make ourselves parties in the war. This is a dilemma, which Great Britain has no right to force upon us, and for which no pretext can be found in any part of our conduct. She may, indeed, feel the desire of starving an enemy nation; but she can have no right of doing it at our loss, nor of making us the instrument of it."

This quotation I conceive is the development of the principles which I have laid down, and when it contains the sentiments and opinion of the American government itself, it would be unnecessary to enter into an ulterior discussion.

It cannot now, therefore, be doubted by any man, who will discard prejudices, love, hatred, and in a word all the passions, which lead the judgment astray, that the French Republick have a right to complain, if the American government suffer the English to interrupt the commercial relations which exist between her and the United States: if by a perfidious condescension it permitted the English to violate a right which it ought to defend for its honour and its interest: if under the cloak of neutrality it presented to England a poignard to cut the throat of its faithful ally—if in fine, participating in the tyrannick and homicidal rage of Great Britain, it concurred to plunge the French people into the horrors of famine.

But I am convinced this will not be the case—the American government is too much attached to the laws of an exact neutrality—it knows too well that the cause of freemen is interwoven with that of France, to allow the English to usurp a right injurious to the interests of the Republick.

It is under this conviction that I have written to you this letter, persuaded that it is perhaps superfluous to address to you these reclamations. I do not doubt but that the American government will prove to all Europe its intention of maintaining the most exact neutrality with regard to the belligerent powers, that it will compel England no longer to violate the rights of nations, and that it will henceforward relieve France from the unpleasantness of addressing new complaints on this subject.

Accept. sir, &c.

P. A. ADET.

No. 124.

TRANSLATION.

The Minister Plenipotentiary of the Republick of France, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 9 Germinal, 4th year of the Republick, one and indivisible, (March 29, 1796, O. S.)

SIR,—On the 7th Vindemiaire last, I had the honour of writing to you, relative to the arrest of American vessels laden with provisions for France. I flattered myself with receiving from you an answer which might prove to my government that the United States, faithful to the neutrality which they have imposed on themselves, neglect no means of repressing every infringement made on it by any of the belligerent parties to the detriment of its enemy.

Near six months ago, I sent a copy of my representation to my government, and at the expiration of that term, I was under the necessity of informing it that I still expected a solution of this important object.

Now, sir, I complain upon a point infinitely more essential, and which does not to me appear susceptible of delay: I mean the impressments exercised by the English on board of American vessels.

For some time each successive vessel arriving from the colonies brings, in this respect, more frightful accounts than the former, and I have just received from the vice consul at Alexandria, a letter of 4th Germinal, relative to the impressment used by the English ship Swan and the frigate Success upon the crew of the brig Fair Columbian from Alexandria, freighted on account of the English by Messrs. Patterson and Taylor.

It is not then sufficient for the English to purchase a number of vessels, which they load with all sorts of provisions, to navigate their vessels under your flag, to carry horses for remounting the cavalry, to enrol grooms for this military service, but they must also take by force the American crews in order to make them serve on board their vessels of war, to the ruin of our colonies.

You must be sensible, sir, that simple and ordinary measures are insufficient in such circumstances—we have neither the right nor desire of interfering in your interior

administration, but when hostilities are in question, France may request an account of the measures you have taken for putting a stop to them, and repairing the damage they already have caused or may hereafter do.

Permit me, sir, to repeat to you, they should be prompt and efficacious. Would representations to the court of London, which in the course of six months perhaps might put a stop to these odious attacks, if at the end of that time they are no longer necessary, be sufficient in the existing circumstances?

The English division in the colonies is entirely recruited by mariners taken from on board your vessels. It is by their means that they block up the Republican ports, it is to their succour we ought to attribute the loss of these immense possessions, if the American government should not take the step which the duty of neutrality dictates to it. Accept, sir, &c.

P. A. ADET,

No. 125.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 19 Germinal, 4th year of the French Republic, one and indivisible (the 8th April, 1796, O. S.)

SIR,—I have the honour to send you herein enclosed, the letter which you requested on the 7th of April, in favour of Mr. Henry Alexander, detained at Petit Goave.

I have still reason to hope that the former which I wrote to general Rigaud on the 6th Pulviose last, will have the effect desired by the family of the young man whose liberation you claim.

Accept, sir, the assurance of my respect,

P. A. ADET.

P. S. Permit me to remind you of my letters of 21st and 25th Ventose, and 9th Germinal, to which I expect your answer.

P. A. A.

No. 126.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 1st Floreal, 4th year of the French Republic, one and indivisible (April 21, 1796, O. S.)

SIR,—I had the honour of writing to you on the 9th of last month, relative to the impress exercised on board of your vessels by the English.

The vice consul at Alexandria, announces to me the return of Messrs. Evelitts and Scamman, captains of the schooners Chloe, Anne and Industry, whose entire crews have been impressed at the Mole.

Twenty-five vessels purchased by Mr. Cavan are still in that port, and recent orders have been given to him for expediting fifty more.

Mr. Kenna, captain of the schooner Free Mason, is also arrived from Martinique, where he left twenty vessels, whose crews as well as his own, have been forcibly carried off.

I do not add a single reflection to my former letter.

Mr. Henry Alexander of Baltimore, in whose favour you requested my intervention with general Rigaud, informs me by a letter this moment received, that he is restored to the affections of his family.

Accept, sir. the expression of my respect,

P. A. ADET.

No. 127.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 22 Nivose, 4th year of the French Republic, one and indivisible (the 12th Jan. 1796, O. S.)

SIR,—Letters from the French consuls at Baltimore, Norfolk, and Alexandria, announce to me that the English have purchased a great quantity of flour in Maryland and

Virginia, and that they have laden it on board American vessels which they have likewise purchased. This flour is destined to support the English army directed against the French colonies. It is not without the most severe chagrin, that I have observed the enemies of my country drawing from yours means of subsistence, without which they must have renounced every species of attempt, and that I have found myself incapable of preventing them. Indeed, who could arrest the exportation of this flour, if not the government of the United States? and if I had solicited it of them, could I have calculated upon their condescending to my request, when they would have regarded that condescension rather as a favour than as a duty rising out of their neutrality? But, sir, there is another circumstance, upon which the letters from the consuls leave me no doubt, and to which the laws which the American government have prescribed to itself for its neutrality oblige it to pay attention. The vessels which the English have purchased, are commanded and manned by American seamen. If your fellow citizens are prohibited from serving in the cause of France, neither should they be permitted to range themselves under the British flag—otherwise the neutrality would be only a vain term, and a certain mean of assisting secretly, and without running any risk, a power which no one would dare to aid openly.

There is also another object, sir, upon which I should fix your attention. The consul at Norfolk informs me that the English have caused to be purchased a great number of horses in Virginia, and that even stables are established near Norfolk for receiving them. These horses are destined for the English cavalry, to be debarked at St. Domingo, to attempt the conquest, and to endeavour to bring about the ruin of that place. If France be interested in frustrating these projects, should not the United States also, perhaps under certain relations, prevent the execution of them? Besides, their neutrality imposes on them the obligation of arresting the exportation of horses, which constitute the principal force of the English army. The horses are contraband of war; you are sensible of this, sir, and no contraband of war can be furnished to a power at war, without the other power having the right of opposing it in any manner whatever.

(So says Vattel, vol. 2. book 3. chap. 7. § 113, Amsterdam edition, 1775.)

“The nation which makes war, has the greatest interest in depriving its enemy of every foreign assistance, and therefore has a right to regard, if not absolutely as enemies, at least as people who care very little about injuring them, those who carry to their enemy the things which they require for war; they punish them by confiscating their merchandise. If the sovereign of the latter should undertake to protect them, it would seem as though he himself wished to furnish this kind of succour; a step contrary to neutrality.”

It is therefore evident, sir, from this passage, that no neutral government can protect contraband of war. But would not the American government protect it, if it should permit to be exported from its territory, horses destined for the English army? Indeed, sir, if after being informed of the designs of the English, it could stop the exportation of the horses which they have purchased, and did not do it, it is evident that the omission would constitute a proof of its consent and approbation.—And what difference is there in this case between tolerating contraband and protecting it?

It is useless, sir, to spin out this letter any further. I think that the facts are so self evident, that I now flatter myself with receiving a proof of that friendship of which the United States have so often given assurances to the Republick. Accept, sir, the assurances of my esteem,

P. A. ADET.

No. 128.

Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, Jan. 20, 1796.

SIR,—On the 15th I received your letter of the 12th instant, and laid the same before the President of the United States.

The principle of an impartial neutrality, and the established practice agreeably to the laws of nations, furnish answers on the subjects you have been pleased to bring into view.

You admit, that with respect to the flour which the "English have purchased in Maryland and Virginia," it would be an act of "courtesy" in the American government to forbid its exportation. But such courtesy, you must be sensible, would violate our duty as a neutral power, and of course it cannot be rendered: the purchase and exportation of flour to the dominions of the French Republick having been, during the whole of the present war, perfectly free.

You also represent, that the English are purchasing horses in Virginia, "and horses are contraband of war." That horses are contraband will not be questioned; but your position, "that what is thus contraband cannot be furnished to one of the powers at war, without giving the other the right of opposing it in *any manner whatever*," cannot be admitted. If the subjects of a neutral power export contraband goods, the passage you have cited from Vattel shows, what kind of opposition may be given to it: the neutral exporters may be "punished by the confiscation of their merchandise," if taken at sea by the belligerent power against whom it is destined to be used. But the same chapter in that book informs us, that all the powers at war have a right to resort to a neutral country "to purchase provisions, *horses*, and in general every thing of which they stand in need." Horses have always been a considerable article in the commerce of this country: and in the same book we find the following passage. "If a nation trades in arms, timber, ships, military stores, &c. I cannot take it amiss, that it sells such things to my enemy, provided, that it does not refuse to sell them to me also." The justness of this doctrine is indisputable, and has, moreover, been explicitly assented to by one of your predecessors.

Mr. Hammond, the late British minister in the United States, had represented, "that arms and military accoutrements were buying up by a French agent in this country with an intent to export them to France." To this it was answered, on the part of the United States, "that our citizens have always been free to make, vend, and export arms: that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern.

would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, has not required from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of the belligerent powers, on their way to the ports of their enemies." This you will see stated in Mr. Jefferson's letter to Mr. Ternant, of the 15th of May, 1793. This letter was delivered by Mr. Ternant to Mr. Genet, whose answer to Mr. Jefferson, on the 27th of the same month, contains this expression. "I have no knowledge of the purchase of the arms in question, and at all events the reply you have made to Mr. Hammond, would convince him of the nullity of his observations."

But there is a third point stated by you, which required some investigation, and has occasioned the delay in answering your letter. You inform, that the flour, purchased by the English in Maryland and Virginia, is laden on board American vessels which they have purchased, and that these vessels are manned by American masters and sailors; and observe, "that if our citizens are forbidden to serve the cause of France, they ought not to range themselves under the flag of Great Britain." This observation, being too indefinite to admit of a precise answer, you will allow me to proceed further in stating our rights and duties in relation to the belligerent powers; from which I trust it will appear, that the interference of the American government in any of the cases mentioned in your letter would be improper.

So far as selling and carrying supplies of provisions and goods of all kinds to France and her dominions can be viewed as serving its cause, our citizens have been and continue free to sell and transport them. They have never been forbidden to do this. They have merely been admonished by the proclamation of the President, that if any of these goods should be of the kind deemed contraband, and as such should be seized and confiscated, they would not receive the protection of the United States. But this rule is not confined to France; it is to be observed towards all the belligerent powers; because towards

all the American government determined to observe an exact neutrality.

In the same proclamation, the citizens of the United States were cautioned against committing, aiding or abetting hostilities against any of the powers at war; and informed that if any of them by doing those things rendered themselves liable to punishment under the law of nations, the United States would not protect them. Since that time, the legislature of the United States have enacted a law which forbids any citizen of the United States accepting and exercising within their jurisdiction, "a commission to serve a foreign prince or state *in war*, by land or sea," or to "enlist or enter himself in the service of any foreign prince or state as a *soldier*, or as a *marine* or *seaman* on board of any *vessel of war*, *letter of marque*, or *privateer*," under the penalty of fine and imprisonment.

This is the extent of the law of the United States, relative to the services which may *not* be rendered to the belligerent powers. And herein it was doubtless the intention of the legislature to conform to the rules of the law of nations; imposing adequate penalties for the violations of those rules, but prescribing no new restraints.

Hence I conclude, that it is not unlawful for the citizens of the United States to sell or hire their *unarmed* vessels to any of the powers at war, and to man the vessels so sold or hired, these continuing *unarmed*.

From the laws of nations and of the United States, permit me to pass to the subsisting treaty of amity and commerce between France and the United States: it will, if I mistake not, throw much light on the questions you have raised, and if there remain any doubt under the laws, the treaty will remove it.

By the 23d article of the treaty, the two powers agreed, that it should be lawful for the people of both countries, "to sail with their ships, with all manner of liberty and security, no distinction being made, who are the proprietors of the merchandises laden thereon, from any port to the places of those who then were or thereafter should be at enmity with either." It was also stipulated "that free ships should give a freedom to goods, and that every thing should be deemed free, which should be found on board the ships belonging to either of the contracting

parties, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted." It was also agreed, that the same liberty should be extended to persons who should be found on board a free ship; when, although they should be enemies to either party, they are not to be taken out of the ship, *unless they are soldiers, and in the actual service of the enemy.*

The 12th and 13th articles of the treaty particularly contemplate the case that the vessels of each of the contracting parties will take on board contraband goods to transport to the enemies of the other, and regulate the proceedings thereon. The contraband goods if discovered, may be taken and confiscated, "but the ship itself as well as any other goods found therein are to be esteemed free." And we have seen above, that the 23d article makes provision for the case where the vessels of either party should be employed in transporting the enemies of the other, and that even these are to remain untouched "unless they are soldiers in the actual service of the enemy." But it is plain that the vessels themselves are to remain free.

With respect to any marine service of the people of the two contracting parties, if we recur to the 21st article of the treaty we shall see that it imposes no restraint but this; "that they shall not apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the other."

Practice has corresponded with these rules. Independent of the very numerous exportations in single vessels from this country of every article it could furnish useful to France and its dominions, two fleets, of which American vessels formed a part, sailed from the United States for France under convoy of French men of war: the American vessels thus ranging themselves (if you please) under the flag of France. And can we now, as an impartial neutral nation, deny the same to the British? But will it be said, that our sailors manned only our own vessels? Without supposing that none of them served on board unarmed French vessels, permit me to ask, what is the difference between the citizens of a neutral nation hiring their unarmed vessels with their crews to transport provisions and stores for one of the powers at war, and selling,

and then manning the same vessels for the same service? I do not discover any, and until a distinction can be manifested, I shall conclude, that whatever consequences may result from the measures which are the subject of your letter, these measures the government of the United States have no right to restrain.

With great respect I am, sir, &c.

TIMOTHY PICKERING.

No. 129.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 11th March, 1796, (O. S.) 21 Ventose, 4th year of the French Republick, one and indivisible.

SIR,—I have duly received the answer you were pleased to make to my letter of the 22 Nivose last. I have till now deferred presenting additional claims in support of those I had the honour to address to you, because from the arrest of the sloop *Diana*, by order of the governour of Virginia, I conceived that a new examination of the question had determined you to adopt a course entirely opposite to your first resolutions; but since it is otherwise, that the American government has ordered the governour of Virginia to permit to depart and even to protect the vessels the English have laden with horses; since the English renew in Connecticut and Massachusetts the purchase of horses which they have made in that state; since they are also disposed to export these horses in vessels purchased in your ports, and navigated by American captains and sailors, you will permit me, sir, to renew my solicitations with the government of the United States to induce it to take those measures which in these circumstances, its duty and neutrality dictate. You must recollect, sir, that in my letter of the 22 Nivose, I called your attention to two questions. 1. Should the government of the United States in conformity with its neutrality, prevent the exportation of an article contraband of war, purchased by the enemies of France? 2. Can that government without compromit-

ting its neutrality, permit its citizens to serve on board of vessels of the enemies of France?

I contented myself with stating to you some of the reasons which led me to believe that these questions according to the law of neutrality should be determined in favour of the Republick. I flattered myself that your knowledge and the attachment of the government of the United States to our cause, would supply any deficiency occasioned by the small range of my arguments. But it appears to me that I did not explain myself in a manner sufficiently precise in order to realize my expectation.

Therefore I shall enter into a new discussion of the questions which I presented to you in answering the different passages of your letter.

When to prove to you that the United States should oppose the exportation of horses purchased by the English, I cited the paragraph 113. chap. 7. book 3. of Vattel, I was aware of the paragraph 110. which precedes it, and which you oppose to my quotation; but I must observe to you that this paragraph has not the least connexion with article 113. which relates to the duties of governments as to contraband of war, it cannot therefore destroy the reasoning contained in the 113th paragraph, which is subsequent to it. If it were otherwise, if Vattel should be found to contradict himself in as clear a manner as might be supposed from your observations, we should not in future bring this author to our support. But besides the matter in question at present does not relate to citizens or subjects of a neutral power carrying on commerce in contraband of war, at their risk, peril and fortune, and exposing their merchandise to confiscation, but several agents of a government in enmity with France* who coming here as to one of their provinces, purchase horses and collect them in stables prepared by themselves, put them on board of vessels purchased in this country, and export them with as much security as if they were drawing them from their own territory. If you can answer me as to cases in which your citizens shall traffick in this contraband of war, "Your government is to punish them if it can by confiscating their vessels," I should ask, sir, against whom should my government act when it cannot seize this con-

* See the quotation at the conclusion of this letter.

traband which is carried on under the eye of the government of the United States. "For it would be a cruel error, says Galliani* to think that a belligerent power has no other right as to contraband of war than that of arresting it herself, if she be able to seize it. If a sovereign who sees contraband merchandises selling to his enemy by a neutral state should not succeed in seizing them, his right to object and complain is not lessened, he has a right to think himself grievously offended, to demand, and to do himself all the justice that an offended sovereign is warranted in exacting."

In support of the conduct of the government of the United States, you cite this paragraph from Vattel: "If a nation carries on commerce in arms, timber, ships, and ammunition, I cannot be offended at her selling these things to the enemy, provided she does not refuse to sell them to me also." But, sir, can it be inferred that a neutral nation has in no case the power of preventing the belligerent nations drawing from her merchandises which are contraband of war? Can it be supposed that such a step would be contrary to the laws of neutrality? No, sir; for if a nation confines itself within the limits of neutrality by granting the same advantages to the belligerent parties, she does not depart from that neutrality by refusing them to those parties. The following passage of Galliani, which I have the honour of citing to you, will support this opinion.† "When a belligerent nation wishes a neutral and friendly people not to carry contraband of war to its enemy, she should formally and in a very explicit manner notify the neutral government of her intentions; should she not do it, the neutral nation has a right to regard her silence as an assent to the continuation of her ordinary commercial regulations."

"When a belligerent state makes such a declaration, it of course follows that it renounces the right to ask of a neutral people contraband merchandise, the exportation of which it desires to be prohibited to the enemy; and consequently it should confine itself to require of the neutral country, an impartial observance of the refusal or prohibi-

* Vide book 1. ch. 9. § 5. Galliani's *Recht der neutralitat uebersetzt* von Casar. Leipzig, 1790.

† Vide book 1. ch. 9. § 3. of the works already cited.

tion : for it would be unjust to exact a deviation from principles in its favour, and by committing this fault the neutral government would soon or late hazard a departure from its position."

But, sir, when I requested that the English might not be allowed to export horses from this country, I tacitly obligated myself in the name of the Republick, not to cause any exportation of a similar nature. I do not conceive that you could ever reproach me of having wished to lead you from the limits of neutrality in our favour ; having always requested that that neutrality should be equally observed towards our enemies and us. Hence, sir, you should be far from suspecting that I wished to profit of an advantage, which I desired to see refused to the enemies of my country ; and the government of the United States should, I conceive, admit my claim, on demanding an explicit declaration from me of the restriction which you justly imagined I had tacitly imposed on myself. For "the declaration being made (says Galliani)* to the neutral state, desiring that it should grant no contraband of war to the belligerent powers should always be received with deference by the neutral nation, unless this prohibition should cause an extreme and insupportable injury to her, because every thing serving immediately to the destruction of humanity, should rather be refused than granted, in all cases where a just and wise government has the choice. Such a demand comports more with a real impartiality, with sincere friendship, and with the desire of acting fairly as to the belligerent nations, than to subscribe with these sentiments to a contrary conduct."

I had every reason to hope, that, penetrated with these principles, the government of the United States did not expect, in requesting that the English might not be permitted to export horses, I should declare in the name of the Republick, that she imposed on herself the condition not to export them ; but since it is required, I make that declaration, sir, and I venture to flatter myself, that by conforming to the principles I have developed to you, it will be followed with the effect I expect from it. I do not conceive, sir, that you should avail yourself of the exceptions contained in the passage of Galliani, which I have

* Vide book 1. ch. 9. § 3. of the work already cited.

cited, to answer my demand in the negative ; for horses do not constitute the principal branch of your commerce. Your exports in 1792 states the number of horses to have been 4551, which at a mean price of \$40, amount to about 891,220 livres Tournois, but what is this sum in comparison to 115,530,000 Tournois, the whole amount of your exports ? Besides, by preserving your horses in the country, and keeping them at a moderate price, by not exporting them, would you not promote agriculture, and the interest of your country ; would it not accord with the rules of policy ?

But supposing that the exportation of the horses constitute a principal branch of your commerce, could this fact be made use of to authorize the exportation of that species of contraband of war ? Could it be said that the government of the United States would only imitate the conduct of all people in similar circumstances ? No, sir, the conduct which Denmark, Sweden, the city of Hamburgh, and particularly the Swiss, have held in the present war, is entirely opposed to that assertion. It would be too tedious to offer you all the examples I could cite : I shall content myself with speaking of the Swiss, of whose commerce the exportation of horses forms a principal branch.

You know, sir, that neither the wisdom of the Swiss, their knowledge, their ancient experience, their exact observance of treaties, nor their respect for the law of nations, can be doubted ; you know that their country is situated between France and the territory of her enemies, and that it consequently offers great resources to the belligerent powers, of the various articles of contraband of war : each power has endeavoured to profit from the advantages of this situation : but as soon as one of the powers wished to draw from the Helvetick territory, merchandises contraband of war, and the others presented complaints on the subject, the Swiss immediately stopped the exportation. They have moreover prohibited the exportation of all contraband of war, even that of horses, which constitute their principal branch of commerce ; and they conceived it more consistent with the character of a neutral people and friends to peace, to restrain their commerce, by refusing to their neighbours all contraband of war, than to extend their commercial relations, by furnishing each with the means of continuing the war.

I know that the conduct of one government does not always serve as a rule to another; I know that I have no means to engage the government of the United States to follow the example which I cite to it; but I should make known to it that the principles which I have laid down are not foreign to a free and enlightened policy.

Besides, sir, were all people to prefer their commercial interests to the principles of neutrality which I have developed, should that be a reason for the United States to imitate them, when France and her enemies are in question? Did not our republican government sacrifice its interests to yours with respect to the law of nations? When the English seized your neutral vessels, it caused them to be seized in like manner; but as I mentioned to you in my letter of the first of September, 1795, which remains unanswered, it was not from the same motive. No, sir, it was indirectly to support the right of neutral nations. Moreover, did she long follow the example of her enemies? did she not revoke the orders which had been given? are not the decrees of the 25th Brumaire and 14 Nivose, in the 3d year, which I sent you with my letter of the 26th Messidor, evident proofs of it? When in the course of last summer Great Britain again caused your vessels to be arrested, to prevent their carrying grain to France, did the French government do so? Has she not strictly respected the right of neutral nations and the liberty of your flag, even to the injury of her own interests? But if the amicable relations of two people are reciprocal, why at this time should you refuse to acknowledge the fidelity of France, by an act equally faithful? especially when that act would not compromise your interests, and would be conformable to the laws of neutrality, and in certain respects to the obligation of treaties. It is with the conduct of governments as with that of individuals—it is not by words but by actions that friendship and attachment are proved.

You will perhaps object to this, sir, that you would promote the anger of Great Britain against the American government, by prohibiting the exportation of horses: but in allowing it, might it not be said that you would equally promote the anger of France? and would you not better fulfil the object that all neutral nations should propose to themselves, that of maintaining a good understanding with the belligerent parties, by at once refusing to France and

England the right of withdrawing from you an article contraband of war, which the latter power cannot export without the Republick of France experiencing a real injury? Besides why should England complain? A general measure operating upon all, injures no one in particular.

If I have proved to you, sir, as I cannot doubt from all I have said, that it comports with the laws of neutrality, with your relations as to the belligerent powers, to stop the exportation of the horses which the English draw from you, the request I have made in this respect was founded; and I conclude upon the first question that the government of the United States should, agreeable to the laws of neutrality, arrest the exportation of an article contraband of war purchased by the enemies of France.

Having resolved one of the questions which form the subject of this letter, I pass to the second.

It is conceived in these terms. Can the government of the United States, without compromising its neutrality, permit its citizens to serve on board of vessels belonging to the enemies of France?

This question relates to the manœuvres practised by the English in Virginia, and which they are still carrying on in Massachusetts and Connecticut. They purchase American vessels, and man them with American captains and sailors. It is to this conduct of the English that this phrase of my letter of 22 Nivose related. "If your citizens are not to serve the cause of France, they should not range themselves under the flag of Great Britain." I conceived it had a meaning sufficiently precise to strike you at first, and that you would see I claimed the most perfect neutrality on the part of your citizens with regard to France and England; that is to say, that they should not serve in the military operations of the two nations. But I have still had the misfortune of being deceived on this head, and I shall enter into new explanations on the subject.

You allow, sir, that agreeable to the laws of nations, and to those of the United States, your citizens cannot enrol themselves in the service of any foreign prince or state: That is to say, that your citizens cannot aid in any manner the military operations of any foreign prince or power; but can the military operations of a foreign prince

or power be aided only in the above mentioned characters? You think so, sir; I venture to hope that you will permit me to be of a contrary opinion. Can your citizens man vessels destined to transport troops and ammunition from one place to another without serving in the war? Do not the transports filled with troops and ammunition, sailing with and debarking under the protection of a fleet, form a part of that fleet? Are they not necessary means to the success of the projected operation? And are the captains and sailors of these transports useless beings in the expedition? And because they are not on board of ships of war, it may be said they are not in the service of the belligerent power, that they do not aid its operations! No sir, such an assertion can never be fairly advanced; it would be to torture words, and to fall into puerile distinctions which should never be met with in free and faithful discussions.

I think, sir, that these principles being admitted, you will readily conceive, that if the laws of the United States and our treaties are silent on the circumstance just cited, that if it has not been foreseen and explicitly declared contrary to neutrality, it is not the less so in itself, and should be prevented by every nation who wishes to preserve her neutrality.

But, sir, are not the American vessels purchased by the English become, by the very act of sale, English property? Although you found no difference

“Between the citizens of a neutral nation hiring their unarmed vessels, with their crews to transport provisions and stores for one of the powers at war, and selling and then manning the same vessels for the same service.”

Still, however, there will exist between the two cases the following distinction:

In the first, your fellow citizens man American vessels: in doing this they use the right appertaining to them, and which no one can contest—on the contrary, in the second—they are English vessels caused to be navigated under the American flag, and by American captains and sailors, and which have no right to your protection since they are enemies property. For you know, sir, that in order to acknowledge an armament as belonging to a nation, the vessel and two thirds of the crew must belong to that nation. This being admitted—are not those vessels destined

to transport the horses, ammunition and troops designed for the conquest and devastation of our colonies? That therefore the American captains and sailors on board of them will serve in the expedition? And after what I have said, can you allow this without injuring your neutrality? Can you without injuring us, furnish to our enemies an arm to aid them in their conquests? You are not uninformed that the English military marine is furnished by that of commerce: but if a foreign nation furnishes that marine with auxiliaries for its service, it is clear that she so much augments the force of the military marine: and also when transports and other unarmed vessels are placed among those of commerce and serving in a military operation, it is certain that the nation furnishing these vessels with seamen, contributes to the increase of the military force of a belligerent power. Can she do this without compromising her neutrality, and is not this the case now that your citizens are serving on board of English vessels?

What I have said is I conceive sufficient to prove that the United States should not permit their citizens to man any English vessel whatsoever: but it is necessary that I should answer some of the observations you have advanced in support of a contrary opinion.

I need not make any remark on the distinction you admit between an armed and an unarmed vessel; it is, I conceive, destroyed by the reasoning presented to you; but I should call your attention to the identity you wish to establish between that which at present gives rise to my complaints, and a previous circumstance in order to prove that the Americans having ranged themselves under the French flag, could not be prevented from putting themselves under that of Great Britain. But, sir, how do you find an analogy in two cases which are dissimilar? Be pleased to recollect that the vessels which sailed from your ports under the escort of French ships of war, were not American but French property, and that if any others bearing your flag, took advantage of that escort, it was to avoid (if you please) the piracies of the English who then seized your vessels, and not to aid us in a military operation. Is it therefore impartial to permit American seamen to aid the military operations of the English?

To support the system of neutrality pursued by the government in not prohibiting your seamen from serving on

board of English vessels, you then suppose, sir, that your seamen have served on board of ours. But you are not ignorant that the pay of American sailors is higher than that of our mariners : when a man labours for a livelihood, he will not quit a station in which he finds much profit for one less lucrative. Seamen therefore have not spontaneously quitted your vessels, to enter on board of ours ; neither force nor violence have been used to obtain them—never have seamen been impressed in France—never have our officers at sea exercised this atrocious act with regard to neutral nations. By your supposition, therefore, one might be supported in tolerating an infraction of the neutrality of the United States.

I conceive, sir, that having proved to you that American vessels purchased by the English, being English property, your seamen cannot serve on board of them, I may conclude that the United States cannot, without compromising their neutrality, permit their citizens to serve the enemies of France.

I shall not make any reflection upon the last sentence of your answer. “ I shall conclude that whatever consequence may result from the measures which are the subjects of your letter, these measures the government of the United States have no right to restrain.”

It is the province of my government to which I shall send your letter, to explain and to draw the consequences resulting from it. Accept, sir, the assurance of my esteem,
P. A. ADET.

No. 130.

From the Secretary of State to the Minister Plenipotentiary of France. Department of State, May 25, 1796.

SIR,—I intended long since to have returned an answer to your letter of the 11th of March, in which you renew your objections to the purchase and exportation of horses by the British from the United States. It was some time before it was in my power to consider your remarks and examine the authority of Galliani, which you quoted ; but that consideration and examination convinced me, that the line of conduct which the government of the United States had prescribed to itself, was that which it ought still to

pursue. I considered the right of the citizens of the United States to sell and export contraband goods to any of the belligerent powers, as incontrovertibly established in our commercial treaty with France. The arguments which I drew from this source, and which in my view contained a demonstration of this right, you have passed over in silence, and recurred to the authorities of Vattel and Galliani, especially of the latter on the rights and duties of neutral powers. These authorities, however, appear to me as little to support your claims, as the articles of the commercial treaty formerly adduced.

Referring to Vattel, book 3. ch. 7. (the object of which entire chapter is to delineate the rights and duties of neutrality) your first remark is, that the 113th section, which you quoted, has no relation to the 110th, cited by me. But permit me to observe, that it would be a novel mode of interpreting an author, to take up a single paragraph, and detach it from all his other remarks and reasonings in the same chapter and on the same subject. Doubtless (as the same author says elsewhere) "we ought to consider the whole discourse together, in order perfectly to conceive the sense of it." (b. 2. ch. 17. § 285.) In both the sections cited (110 and 113) the rights of neutrals to trade in articles contraband of war is clearly established; in the first by selling to the warring powers, who come to the neutral country to buy them; in the second, by the neutral subjects or citizens carrying them to the countries of the powers at war and there selling them.

The same just rule of interpretation applied to the discourse of Galliani on this subject, will exhibit a result not less justificatory to the conduct of the United States.

Your first quotation from that author is a marginal note, importing, that if a belligerent power cannot seize contraband articles sold to an enemy, it may nevertheless object against it, complain of it as an injury, and demand and do itself that justice, which an injured sovereign *has a right to exact*.

To this I will subjoin a passage from the 4th section of the same chapter and book which you have cited: "I repeat it then once for all, that neutral nations must observe the most conscientious sincerity, as well in refraining from the sale of contraband of war, as from all exportation of it, *except only in the cases I have above spoken of.*" A

recurrence to these exceptions, and to the other observations of this writer will show, that his doctrine does not oppose the principles adopted by the government of the United States. It would be too tedious to recite all his reasoning on this subject. I shall content myself with quoting a few of his remarks.

Book I. ch. 9. § 3. "Much greater is the number of those, who believed that every belligerent power possesses essentially the right of forbidding neutral powers to sell arms and warlike stores to its enemy; and that this is a full right, that is, a right of strict justice. They do not distinguish the circumstance, when the neutral powers carry on trade with *one* of the belligerents, and supply it with arms and warlike stores, and when with perfect impartiality they trade with *both*. In the first case, the preference of one party is apparent, and thenceforward the slighted and neglected party begins to possess a right in regard of the neutral state: for friendship with it is at an end: but as in the other case friendship does not appear to have ceased, there is not yet to be discovered any reason to act inimically on this account towards a friend."

"And in truth this reflection has led many writers to conclude, that neutral powers cannot be forbidden to exercise a *free trade* even in contraband, as long as they exercise it in an impartial manner, with both belligerent parties, *or are willing to do so*. *I too cannot say that they decide very unjustly.*"

"I say then, that for those nations, who have not otherwise bound themselves by express compact, it is not a duty of strict right to carry no contraband articles to the belligerent powers. For, if even a belligerent power had a full and complete right to set itself against such trade, yet between two sovereigns, who are placed in the situation of natural equality, freedom and independence, the full right of the one is not annulled by the full right of the other. And in regard of neutral nations, the renunciation of their own convenience in favour of the greater convenience of another, is only a duty of equity, but not of essential and strict right."

"Hence it follows, that we must often inquire and distinguish, whether the trade in those goods, which are called contraband, is of greater or less importance to the nation, which exercises it. In the first case, since we are discussing

a duty of favour, which admits of infinite gradations, we cannot confidently expect an extraordinary and very affecting sacrifice, as we may when it extends only to a small inconvenience."

Then follow, what the author states as the true positions on this matter, some of which you have cited :

1. When a belligerent nation desires a friendly neutral nation to carry no contraband to its enemy, it must formally disclose its wish ; silence importing a satisfaction in the natural state of things.

2. When it has thus disclosed its request, it must itself renounce all pretensions to be furnished with contraband goods.

3. When a neutral state has entered into a treaty of peace and commerce with one of the belligerent powers, stipulating to carry no contraband to the enemy, there is always a condition implied, that the like goods shall be denied to both the belligerent powers without distinction.

4. "Consequently the belligerent state, which has never disclosed to its neutral friend, that it did not see with contentment the latter supplying its enemy with contraband of war, *and much more if it has availed itself of this privilege*, has bought arms and other sorts of military stores, or what is of more account, has received from it soldiers, recruits, horses, *has no further right to expect, that the neutral should not show the like to the enemy.*"

5. "And finally I say, that the desire expressed to the neutral state, that it should not, during the war, carry any contraband of war to the belligerent powers, must always be followed, when it does not induce a very great and intolerable inconvenience ; in as much as what tends immediately to the destruction of mankind is with better reason refused than permitted : and therefore this desire, much more than its opposite, comports with true impartiality, sincere friendship, and the good of mankind."

I will cite only one more passage from Galliani, which appears to be the result of his considerations on this subject.

B. I. ch. 9. § 4. "If we reflect more upon it, it must be acknowledged, that the first position of the principle, which I have above established, recurs, that belligerent powers have no full right to make this demand (not to carry contraband to the enemy) as also, that there lies no duty of

strict right upon the neutral to refrain from the trade of contraband of war. In the mean time, the desire of the belligerent, who possesses no full right to ask, must be declared in decent and temperate terms : and the request cannot be considered as discreet and acceptable, when it occasions too great inconvenience to the party to whom it is addressed."

I will close this letter with a few observations.

It is well known, that a considerable portion of the exports of the United States consists of articles contraband of war. It is well known, that these have, during the whole of the present war, been freely exported to the dominions of France, as well as to those of the other belligerent powers. It seems then too late (agreeably to Galiani's 4th position) for France to desire, that the citizens of the United States should now abandon a commerce, of which she has availed herself during the several years of the war to this time : and still less ought she, while continuing to enjoy an otherwise unrestrained trade in contraband goods, to expect such an abandonment of only a particular article of contraband, of which she may have no need, and is therefore willing to renounce, because it may chance to be very useful to her enemy. Under these circumstances, a compliance, on the part of the United States would compromit their interests as well as their neutrality. The wants of two or more belligerent powers may together embrace the general objects of the commerce of a neutral nation : but if each were possessed of a right to require the neutral nation to renounce that portion of its commerce which was peculiarly useful to its enemy, the entire commerce of such neutral nation might be annihilated.

The article of horses, although not constituting a principal part of the entire commerce of the United States, yet forms a very essential item in the trade of some of them, particularly of Connecticut ; and from the first settlement of the country, it has been a valuable article of exportation from many of the colonies (now states) to all parts of the West Indies ; and during the whole of the present war, horses and mules (and oxen, which may be used for military purposes, as well as either) have been freely exported to the French, as well as to the English Islands.

You cite the example of the Swiss, that in the present war, they have prohibited the exportation of contraband

goods to all the belligerent powers. Without doubting the fact (of which I had no previous knowledge) I must suppose that very particular motives influenced the Swiss to this determination, which, however full of wisdom at this time, is repugnant to the common practice of those people for ages. "Amidst all the wars of Europe (says Vattel) the Switzers keep their country *in an unexceptionable neutrality*. Every nation indiscriminately is allowed to come thither, and purchase provisions, if the country has a surplus, *horses, military stores,*" &c.

I will now notice the other question, which you again bring into view; whether the United States can, without compromising their neutrality, allow their citizens to serve in the vessels of the enemies of France?

Having in my former letter entered into a full consideration of this subject, and the force of the distinctions and reasons then taken and urged appearing to me still unshaken, I will content myself with a few remarks.

I must still rely on the distinction taken in the law of the United States, between our citizens serving on board of armed and unarmed vessels. Had the legislature viewed the latter as contrary to the law of nations or our neutral duties, it would certainly have been forbidden, as well as the former. To admit that our citizens cannot lawfully enrol themselves in the direct military land or sea service of one of the powers at war, is very different from your position, that they cannot, *in any manner*, aid the military operations of a foreign power: for this would exclude them from carrying, even in their own vessels, not only soldiers, horses, arms, &c. but even provisions: for to the success of military operations, the latter are as essential as the former. Probably there is not one of the maritime belligerent powers, that has not, in the course of the present war, derived important aid in its military operations, from provisions and other supplies lawfully furnished by the citizens of the United States. Further: in my former letter, I proved, from our commercial treaty with France, that it was lawful for the citizens of the United States, to transport, not only *contraband goods*, but her *enemies*, and even *soldiers in actual service*. For when the two nations, in the 13th and 23d articles, regulated the course of proceedings in such cases, they clearly admitted, the legality of the measure, reserving only to each, the right of seizing

such goods and making prisoners of such soldiers. Had the contrary been their intention, instead of *regulating*, they would have *prohibited* the trade or carriage of contraband goods, and the transportation of troops.

Admitting these conclusions to be just (and such they appear to me) how shall we draw a line between the strong case you have stated, and the transportation of troops and stores in ordinary cases? The case you state is that of a fleet and army destined for some military expedition, and you ask, whether the transports of neutrals, following in the train of such an armament, would not make a part of it?—I confess to you, that the question presents some difficulty: but as the case does not exist, it is not necessary for me to answer it. I am not informed what is the custom of the maritime powers in this respect. The question between us, regards only the *detached* transportation of articles contraband of war, either in our own vessels or the unarmed vessels of one of the belligerent powers. On this point, for the reasons now and formerly given, no doubt exists. To restrain the naval and commercial pursuits of neutrals, because they indirectly aid the powers at war, would, in its tendency, be to annihilate their navigation and trade. It is the very principle on which Great Britain has, in many of her wars, grounded her practice of capturing neutral vessels, carrying on the simple commerce of her enemies, particularly of France. If, said she, neutral vessels are permitted to transport the commodities of France and her colonies, then her sailors, taken from the service of her merchants, will enable her to man more numerous ships of war. But although Britain thus captured the vessels of neutrals, she never considered the persons employed in such commerce, or the nations to which they belonged, as her enemies.

From the manner in which you recite the concluding sentence of my former letter, you seem to consider it as very exceptionable. You will therefore permit me to explain it. In your letter, to which that was an answer, you had stated the object and brought into view the possible consequences of allowing the British to export horses from the United States. It was natural then, after answering your objection, and showing, that they were not supported either by treaty or the law of nations, and that an impartial neutrality forbade the government to impose

the restraint you demanded, to remark, that if the predicted consequences should follow the measures you opposed, the government had no right to restrain them. If you imagined that even an indifference, much more an unfriendly disposition to the interests of France, gave rise to the remark, the sentiments of the government have been wholly misconceived. I have the honour to be, &c.

TIMOTHY PICKERING.

No. 131.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 29th Floreal, 4th year of the French Republic, one and indivisible, (May 18, 1796, O. S.)

SIR,—I have just been informed indirectly, that the House of Representatives has passed a bill for preventing the sale of the prizes which shall be brought in by the ships of war of the belligerent powers. If this law did not appear to me to destroy the effects of our commercial treaty; if it did not appear to me opposite to the duties of an impartial neutrality, I should remain silent; but the interest of my nation and the positive orders I have received on the subject from my government, oblige me at present to transmit some observations which seem to me calculated to merit your attention.

By the 17th and 22d articles of their commercial treaty, the United States and France agree in an explicit manner, that in case one of the two powers should be at war, its enemies should be excluded from the ports of the other, when they shall have made prizes on its citizens. When they mutually guarantied a free admission of their ships of war, of their privateers and of their respective prizes into these ports, it is clear that they implicitly assured to each other the right of there selling these prizes. In fact, France having no continental possessions in America towards the latitude to which English vessels must go on their return to England, it was to her of extreme importance to have friendly ports into which her vessels might

conduct their prizes and sell them, without exposing them anew to the risks of the sea ; which would be the case if they were obliged to send them to France or to her colonies. It was also interesting to the Americans engaged in a war with an European power, to have ports into which they might conduct and freely sell their prizes made upon the coast of Europe, without being forced to cross the Atlantick.

These considerations leave no doubt that by the 17th and 22d articles of the treaty concluded between the United States and France, each nation had implicitly secured to herself the right of selling in the ports of the other the prizes which her ships of war or privateers should have made. This right which the two nations should enjoy has been acknowledged by our enemies, by the courts, and by the government of the United States.

Whenever our enemies have attacked a prize made by a privateer, it has been only under the pretext that the privateer had been armed in the United States, and that she had therefore derogated from both the laws of neutrality and the President's proclamation.

The American courts have never condemned French prizes but upon the fact of having armed in the United States ; and when the contrary has been fully proved, the privateer had the right of selling the prizes without any obstacle. Yet in virtue of what act could she sell her prize ? Of the 22d article of our commercial treaty. This article has already afforded a vast field for discussion upon the implicit right it appears to grant to one of the two nations to arm in the ports of the other. The American government conceived that this construction could not be given to the 22d article ; it explained itself formally in this respect ; but did not object to the right of selling prizes ; it has even expressly acknowledged it, since it has constantly permitted the French ships of war and privateers to enjoy it.

The enemies of France could not accuse you of violating the rules of neutrality by leaving to her the free exercise of this right, as it resulted from the *Casus federis*, and the obligations prescribed by a treaty do not lead a neutral nation from the line of neutrality whenever she acquits herself of them. Therefore, sir, the English cannot for that reason bring in their prizes here. The Secretary of

State assured me in his letter of 6th July, 1795, that this stipulation of our treaty should be faithfully observed in this respect by the American government. Since notwithstanding the similar right assured to the king of Great Britain by his treaty with the United States, it is stipulated that it should not derogate from former treaties entered into by the United States. It is clear therefore from this, that during the whole course of the present war, we should, in virtue of our treaties, enjoy alone the privilege of bringing in and selling our prizes here. But if at present a law existed, prohibiting, in general terms, the sale of prizes, it would bear upon France alone; and at the same time, that it deprived her of an advantage granted by her treaty, it would tend to affect the balance of neutrality.

In fact, sir, French ships of war and privateers having alone the right of bringing in and selling their prizes here, it would be the interest of England, in case she could not procure the same advantage, to deprive France of it: for to take an advantage from our enemy is a real benefit to us, even though we could not enjoy it. Besides, would not England by that means have new chances in her favour? If our prizes could no longer be sold in your ports they must be conducted to the colonies or to France; and, would not the English then have greater opportunities for intercepting them? It is evident therefore that the law procured for preventing the sale of prizes is entirely in favour of the English, and to our disadvantage. But if it be the duty of a neutral nation neither to grant nor refuse more to one of the belligerent powers than to another, when there do not exist particular stipulations provided for by treaties previous to the war, it follows that the law in question being in favour of Great Britain cannot be conformable to the rules of neutrality.

I venture to hope that you will feel as I do the justness of my observations; and that the government of the United States, will take the necessary measures for preventing the effects of a law contrary to the treaties and to the duties of a neutral nation.

Accept, sir, &c.

P. A. ADET.

No. 132.

From the Secretary of State to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, May 24, 1796.

SIR,—On the 20th, I received your letter of the 18th instant, and in answer have the honour to observe; That although the sale of prizes brought into the ports of the United States by armed vessels of the French Republick has not hitherto been prohibited, yet it has been regarded by us not as a right to which the captors were entitled either by the law of nations or our treaty of amity and commerce with France; the contrary has been explicitly declared by the government of the United States, and assuredly communicated to the French government in the year 1793 by the minister of the United States at Paris. In the letter of the sixteenth of August of that year, from Mr. Jefferson to Mr. Morris, are the following passages. “The seventeenth article of our treaty (with France) leaves armed vessels free to *conduct* whithersoever they please the ships and goods taken from their enemies, without paying any duty, and to depart and be conducted freely to the places expressed in their commissions, which the captain shall be obliged to show. It is evident, that this article does not contemplate a freedom to *sell their prizes* here; but on the contrary a *departure* to some other place, always to be expressed in their commission, where their validity is to be finally adjudged.” On the claim of the French agents at that time, not only to sell their prize goods, but to sell them free of duty, Mr. Jefferson remarks, that this article “does not give the right to sell at all.” And afterwards in the same letter he mentions “the exclusive admission to sell here the prizes made by France on her enemies, in the present war, though *unstipulated in our treaties*, and *unfounded in her own practice*, or in that of other nations, as we believe.” For the sense of *France* on this point, you will permit me to resort to her treaty of navigation and commerce made with Great Britain in 1786. In the 16th article it is stipulated, that it should not be lawful for foreigners, not subjects of either crown, and who should have commissions from any other prince or state, an enemy to one or the other, to arm their vessels in the ports of either of the two

kingdoms, *to sell there the prizes they shall make, or to exchange them in any manner whatever.* This treaty having been made subsequent to the treaty between France and the United States, it is plain, that she did not consider the 16th article as militating with the 17th of her prior treaty with us. The truth is, that the corresponding articles in the two treaties contain only *negative* stipulations in regard to the enemies of the respective contracting parties, to prevent the fitting out of privateers and the selling of prizes by such enemies, without any *affirmative* stipulation that the parties themselves may do either.

Instead of detaining you by any further observations, allow me to refer you to the aforementioned letter of Mr. Jefferson, which has been published, in which the construction we give to the articles of our treaty of amity and commerce with France which you have quoted, is illustrated and maintained with a clearness and force of reasoning that removes every doubt.

It being then a position demonstrated that France has no claim of right to sell prizes in the ports of the United States, nor the latter in the ports of France, it is unnecessary to enter into any consideration of the conveniences or inconveniences which either party might receive or suffer by the permission or prohibition of such sales. Each nation, except where treaties with other nations impose a restraint, has a right to judge for itself. France exercised this right in her aforementioned treaty of commerce with Great Britain: and the United States propose to exercise the same right by a law.

The remaining observations in your letter being grounded on the supposition of a *right* to sell French prizes in our ports, and this supposed *right* having been proved not to exist, I may be excused from making any remarks upon them. You quote the assurance given you by the late Secretary of State, that the 22d article of our treaty with France forbidding any of her enemies, and consequently at this time the British, to bring and dispose of their prizes in our ports, would be faithfully observed by the American government: and I may confidently repeat, that it will be observed: the law in question furnishes a proof of it, by the universality of its prohibitions. This form of the proposed law ought to rescue the United States from

the reproach of favouring Great Britain: for a neutral nation can be responsible only for the *equality* of its *rules of conduct* towards the belligerent powers, and not for the *effects* of an exact observance of those rules, which must depend on the situation and circumstances of the warring powers themselves.

I am with great respect, sir, &c.

TIMOTHY PICKERING.

No. 133.

From the Secretary of State to Mr. Adet, Minister Plenipotentiary of the French Republic. Department of State, June 13, 1796.

SIR,—The merchants of Philadelphia are extremely alarmed by the conduct of a small privateer called the Flying Fish, bearing, it is understood, a commission from the French Republic. It is said she has been lying in this port for some time, preparing for sea: and it seems that after inquiring and observing what valuable vessels were to sail for foreign ports, she sailed herself to the Capes of Delaware, and not far from thence lay in wait for the vessels she had marked for her prey. Accordingly on the 9th instant, she seized on the ship Mount Vernon belonging to Mr. Murgatroyd, a merchant of Philadelphia, within two hours after the pilot had left her, and within about six leagues of Cape Henlopen, took possession of all her papers, and forced the master, mate and all her crew, save two men, to leave her, and under these circumstances she was sent, they know not whither! For your more particular information of the circumstances of the capture of this ship and the designs of the captors, I enclose the protest of the master and his two mates.

Such conduct has more the appearance of an act of piracy than of the lawful procedure of an armed vessel regularly commissioned by your Republick. Other vessels were on the point of leaving the Delaware Bay; but witnessing or hearing of this outrage, have put back, and returned up the river for safety.

I have been directed, sir, by the President of the United States to represent this case to you, and to request information, if you are possessed of any, concerning this

privateer, her name, the name of her commander, whether she is commissioned by the French Republick, and what instructions or orders accompany the commission to regulate her conduct.

If the papers found on board the ship, or any other evidence, afforded any just ground to believe her to be the property of an enemy to the French Republick, still neither the master nor the mate (especially the former) ought to have been removed, but to have been suffered to continue in the ship, that, to whatever port she might be sent for adjudication, a claim on the part of the owners might have been presented at the proper tribunal, and their right maintained. This flagrant violation of a common rule, the observance of which is essential to the support of justice, induces a suspicion, that the capturing vessel is a pirate, or a privateer violating the authority of a commission and the instructions prescribed to regulate her proceedings.

I have only further to express to you, sir, the President's reliance, that if you are possessed of any information on the subject of this letter, you will communicate the same with the candour and frankness due from the representative of a friendly and allied nation.

With great respect I am, &c.

TIMOTHY PICKERING.

P. S. The publick solicitude is so great on this subject, and so many vessels are in consequence detained, you will permit me to request a speedy answer.

No. 134.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 26 Prairial, 4th year of the French Republick, one and indivisible (June 14, 1796, O. S.)

SIR,—I have received the letter you did me the honour to write me relative to the seizure of the ship Mount Vernon, by the French privateer the Flying Fish.

I am vexed, sir, not to have it in my power to give you the information you request of me. I cannot say whether the privateer, which is certainly a vessel commissioned by the Republick and come from St. Domingo to this port, has or has not acted conformably to orders which have been transmitted to her; I do not know the instructions given by the Directory to its commissioners in the colonies, nor do I know what conduct it has prescribed to them to cause to be observed by the armed vessels under their orders, in regard to neutrals trading with the enemies of the Republick. It is impossible for me at this moment to furnish you with precise explanations; I shall therefore write to the colonies to obtain them, and I will immediately transmit to you what shall come to my knowledge, as well as to this point, as concerning the event which is the object of your letter. Accept, sir, &c.

P. A. ADET.

No. 135.

Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, Oct. 5, 1796.

SIR,—Some time in June last, I troubled you with an inquiry about the privateer called the Flying Fish, which had captured the ship Mount Vernon. The answer you then gave would have superseded any application at this time, had not the owner and officers of the privateer abused your authority, or that of the French consul of Philadelphia, or both: for I am informed that the owner reports that from you he had his particular orders to take the Mount Vernon and many more vessels; and a deposition now before me states, that some of his officers declare that the consul expressly told them to take the ship Mount Vernon, and that if she was not covered British property, he would indemnify them.

Under these circumstances, the owners deem it important, in the prosecution of their claim, to be furnished with some document which shall enable them to repel the groundless assertions above mentioned of Paris and his officers. Hence I trust you will pardon my troubling you

again on this subject, and requesting that you will be pleased to direct the consul to make out an official certificate for that purpose.

With great respect, I am, sir, &c.

TIMOTHY PICKERING.

No. 136.

The Minister Plenipotentiary of the French Republick to the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 16th Vendemiaire, 5th year of the Republick, one and indivisible (7th Oct. 1796, O. S.)

SIR,—I have received with astonishment the letter you did me the honour to address to me on the 5th October.

I have interrogated the consul on the subject of which it treats, and I have the honour to inform you, that I have forbidden him to subscribe any declaration relative to an affair in which individuals have undertaken to introduce his and my name without any authority for so doing.

In remaining a stranger to this affair, you may rest assured I observe a conduct as favourable as possible to the interests of the American citizens, in the name of whom the Mount Vernon was fitted out.

Accept, sir, &c.

P. A. ADET.

No. 137.

From the Secretary of State to the Minister Plenipotentiary of the French Republick. Department of State, July 1, 1796.

SIR,—It being the duty of the Executive of the United States to watch over their interests, I am instructed by the President to request of you an explanation on the subject of the following questions.

1. Whether the government of France have decreed any new regulations or orders relative to the commerce of the United States?

2. Whether these regulations or orders (if such exist) are confined to vessels laden wholly or in part with pro-

visions? If not so confined, to what other articles they extend?

3. Whether American vessels, laden wholly or in part with provisions, and destined to any other ports than those of France or her dominions, particularly if destined to any English ports, are directed to be captured and carried into French ports, and their cargoes entire, or such parts thereof as consist of provisions, or other specified articles, applied to the use of the French Republick or its citizens?

4. If such captures are authorized by the French Republick, or by the decrees or orders of any branch of its government, on what grounds such authority, decrees or orders have been given?

These questions you will perceive, sir, have relation to reports of designs relative to the commerce of the United States which cannot fail to excite apprehensions in the minds of our merchants. The general interests of the United States are intimately blended with theirs. Hence the propriety of asking such explanations as may serve to tranquillize our commercial citizens, and continue the good understanding and friendship between the two nations, which it has been the uniform desire of the American government to maintain.

Permit me to request an early answer to this letter.

With great respect, I am, &c.

TIMOTHY PICKERING.

No. 133.

TRANSLATION.

The Minister Plenipotentiary from the French Republick to the United States of America, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 26th Messidor, 4th year of the French Republick, one and indivisible (14th July, 1796, O. S.)

SIR,—The business with which I have been burdened has prevented me from answering sooner the letter you did me the honour to write to me on the 1st of July.

I am sorry, sir, to be obliged to leave you in an uncertainty, in which I myself participate. I do not know the nature of the orders which may have been given by my government to the officers of the ships of war of the Re-

publick, or what conduct it has prescribed to them to hold with regard to the neutral vessels trading with our enemies. I am not informed whether the ancient arrets of the committee of publick safety relative to the commerce of the United States are still in force or not. Some considerable time having elapsed since I have received news from France, I cannot have recourse to old dates to resolve your doubts. I can only refer to the answer which I had the honour of giving to your letter relative to the Mount Vernon.

The consul at Boston has just informed me that the collector of the customs there has prevented the unlading and sale of the prizes carried into that port by two French privateers. The consul has ineffectually complained to him. The collector founds his refusal upon a letter which he says he received from you.

I request you, sir, to inform me whether the President has caused orders to be given for preventing the sale of prizes, conducted into the ports of the United States by vessels of the Republick, or privateers armed under its authority, and if so, upon what foundation this prohibition rests.

Accept sir, &c.

P. A. ADET.

No. 139.

From the Secretary of State to the Minister Plenipotentiary of the French Republick. Department of State, July 19, 1796.

SIR,—I have to acknowledge the receipt of your letter of the 14th instant, in answer to mine of the 1st. You embraced the occasion to communicate the information you had received from the consul at Boston, that the collector of the customs there has prevented the unlading and selling of the prizes carried into that port by two French privateers; grounding his proceeding on a letter received from me: and you inquire whether the President has given orders to prevent the sale of prizes carried into the ports of the United States by vessels of the Republick or privateers armed under its authority? and on what foundation this prohibition rests? I will be very frank, sir, in an-

swering these questions, after making some preliminary observations.

The question about the sale of prizes is not a new one. It was agitated and the point of *right* settled in the year 1793. Among the state papers communicated to Congress at the close of that year, and which have been published, is a letter from Mr. Jefferson to Mr. Morris, dated the 16th August, in which is the following passage: "The 17th article of our treaty [meaning with France] leaves armed vessels free to *conduct*, whithersoever they please, the ships and goods taken from their enemies, without paying any duty, and to depart and be conducted freely to the places expressed in their commissions which the captain shall be obliged to show. It is evident, that this article does not contemplate a freedom to *sell their prizes here*; but on the contrary, a *departure* to some other place, always to be expressed in their commission where their validity is to be finally adjudged. In such case it would be as unreasonable to demand duties on the goods they had taken from an enemy, as it would be on the cargo of a merchant vessel touching in our ports for refreshment or advices. And against this the article provides. But the armed vessels of France have been also admitted to land and sell their prize goods here for consumption; in which case it is as reasonable they should pay duties as the goods of a merchantman landed and sold for consumption. They have however demanded, and as a matter of right, to sell them free of duty; a right, they say, given by this article of the treaty, *though the article does not give the right to sell at all.*"

It is plain that France understood this 17th article in the same sense. And accordingly in her treaty of commerce with Great Britain, in 1786, she entered into a stipulation which in the case of a war between the United States and Great Britain, would have prevented the vessels of the United States from arming as privateers, or selling their prizes in the ports of France. In like manner the United States in their commercial treaty with Great Britain agreed on a similar prohibition. Indeed the 24th article of the latter treaty is but a translation of the 16th between France and Great Britain.

Under this view of the case, sir, as soon as provision was made on both sides to carry into effect the treaty be-

tween the United States and Great Britain, it behooved the government of the former to countermand the *permission* formerly given to French privateers to sell their prizes in our ports. Such sales, you have seen, the United States had always a *right* to prohibit; and by the above mentioned stipulation this right became a *duty*. These, sir, are the foundations of the orders which have been given to prevent the sale of the prizes lately carried into Boston by French privateers, to which you refer; it being understood, that the prizes were British property. Those orders have since been made general, and communicated to the collectors in all the ports of the United States. But at present, those orders are confined to prizes brought into our ports by *privateers*.

I have the honour, &c.

TIMOTHY PICKERING,

No. 140:

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 21st Vendemiaire, 5th year of the French Republick, one and indivisible (12th October, 1796, O. S.)

SIR,—The French privateer Leo took into Charleston an English vessel called the Mary. The English consul required, that the sale of this vessel should be prohibited in virtue of the 24th article of the treaty concluded between the king of Great Britain and the United States.

The government of South Carolina, uncertain as to the interpretation, which the 24th article should receive, deferred its decision for some days. In the mean time the French consul condemned the prize and the unlading was commenced. It was stayed by a warrant in the hands of the marshal, who obliged the agents of the privateer to appear before the admiralty.

A decision rendered by the chief justice (Ellsworth) in a special court, interdicted the sale of the prize, in virtue of the 24th article of the treaty concluded with England. This decision was confirmed by the circuit court of Caro-

lina, and when they were going to throw in an appeal to the supreme court, the circular letter from the Secretary of the Treasury relative to the sale of our prizes was made known, and it was conceived that an appeal became useless.

In the mean time the vessel being ready to sink, she was examined and condemned. The privateer agents, of whom judge Ellsworth took a bond of 10,000 dollars as a security that they would not sell the prize, solicited permission to export the cargo in neutral vessels : this was refused : and the cargo, which consisted of 87,000 weight of sugar, became a prey to the flames, during the fire at Charleston. Permission, however, has been given to export a trifling part of the cargo, saved from the conflagration.

The condemned vessel was purchased and repaired by an American. His project was to go and sell her in the Antilles ; but he was obliged to abandon her, and to cancel his bargain, because he was refused American papers.

The privateer agents then wished to send off this vessel in ballast, with French papers ; the collector of the customs, Mr. Holmes, opposed it, and the vessel remains in the port of Charleston, notwithstanding the protest of the French consul, of the 16th Fructidor.

Such are the facts of which the consul of Charleston has rendered me an account, about which I spoke to you yesterday, and to which I call your attention. Such is the violation of our treaty, against which I solicit your justice.

The 17th article of our treaty secures to our privateers the faculty of entering into the ports of the United States, and going out of them with their prizes. The 24th article of the treaty concluded with Great Britain in truth interdicts the privateers of the country at war with that power from entering the ports of the United States, but by the 25th article our rights are acknowledged, and the government has assured me, that it would maintain them. Our privateers have therefore the liberty of freely bringing in and taking out their prizes. The *Mary* could and should then go out of the port of Charleston without any obstacle, as she entered there ; and therefore the collector of the customs violated our treaty when he prevented her going out.

But how shall I qualify the refusal given to the agents of the privateer *Leo* to export in neutral vessels the cargo

of this prize? upon what can such an act be supported? Is there in the treaty concluded with Great Britain any explicit stipulation, which can be brought forward? Doubtless there is none; and yet because our treaty does not contain in an explicit manner the right of selling our prizes, it is contested with and refused to us! By a forced interpretation of the treaty concluded with Great Britain, will it be found that we have not the right to export, in a case of necessity, the cargo of our prizes, in neutral vessels? This manner of reasoning is beyond a doubt inadmissible, and a just and impartial man will never use it. Besides, facts support what I have the honour of saying to you, since the permission which was refused at first was afterwards granted. The state of things had not been changed; and if the collector of the customs thought he could permit the *wreck* of the cargo of the *Mary* to be exported in neutral vessels after the conflagration of Charleston, why did he not allow it before? He was therefore moved not by the spirit of justice, which ought to direct his actions, but by a partiality of which it is difficult to give an account; for he should merely have taken care, according to the orders transmitted to him, that the prize was not sold in the United States, and it was not for him under any pretext to give a greater extent than really existed to the stipulations of the treaty concluded with the English, in order to make them bear heavy on us. Does this conduct appertain to the agent of a neutral government? In consequence of it, have I not a right to require, that the collector of the customs be punished for having violated the treaty on the one hand, and for having certainly exceeded his orders by retarding the exportation of the prize's cargo, which he had no right to do.

I could wish, sir, it were in my power here to stop my just complaints, but there are other facts, which I cannot pass over in silence, and of which it is requisite I should inform you.

The French privateer *Bellona* has carried into Wilmington, North Carolina, the *Betty Cathcart* and the *Aaron*, prizes made upon the English.

The sale of these prizes has been prohibited. They were very leaky. Two tradesmen, named by the collector James Read, have certified, that they could not be sent out again to sea. The privateer and her agents have request-

ed permission to unlade these prizes in order to repair the vessels. The collector refused, upon the basis of the 24th article of the treaty concluded with Great Britain. But I now have that article before me, and I see no stipulation which could authorize the collector James Read to take the step he has done.

Notwithstanding the solicitations and protestations of the agents of the privateer against his refusal, James Read still persisted in it, although the leaks of the Betty Cathcart were such that she made between 30 and 40 inches of water in an hour.—In this latter circumstance he founds his conduct on the orders of government.

I cannot believe, sir, that the collector James Read *then* advanced a fact. I cannot believe, that the federal government, by hindering the unloading of prizes not in a condition to go to sea, thereby wished to aggravate the conditions of a treaty made with our enemies, when they are already so disadvantageous to us. I cannot believe that it wished by its own motion to add to the wrongs which the English well know how to do us by their treaty with the United States.

But be this as it may, it is no less true, that the officers and crew of the Bellona, as well as those of the Leo, have experienced considerable losses by the conduct of the collectors of the customs of Charleston and Wilmington, that these collectors were not at all authorized thus to act, that on the one hand our treaty has been violated, and on the other an arbitrary proceeding, which cannot be justified by any means, has been allowed against French citizens coming into your ports under the faith of previous treaties and conventions, and when they were in no way notified that these conventions were changed. It is no less true, that these citizens have experienced real damage from the doings of the officers of the government, and that they ought therefore to be indemnified in one way or another. This is what I request, sir, in the name of justice, besides invoking your severity against the collectors James Read and Holmes.

I hope, sir, that I shall obtain the object of these requests, that the Mary may freely go out under a French flag, and that I shall have *only* a satisfactory account to render to my government under these circumstances: but in order to avoid in future claims of a like nature, I re-

request you to be pleased to answer the following questions :

1. Will the prizes made by the ships of the Republick upon the English continue to be sold here ?
2. Will the prizes made by our privateers upon others than the English be sold here ?
3. Shall we unconditionally enjoy the right of unlading the prizes in case of damage, and of having them repaired ?
4. Can a part of the prize sufficient only for the expense of repairs be sold ?

It is useless, sir, for me to enter into any detail to lead you to conceive how important it is for the interests of our privateers, that I should be able to say to them in a precise manner what they are to expect on coming into your ports.

I shall be much obliged to you also if you will be pleased to answer me as speedily as possible, in order that I may inform my government of your ulterior resolutions. Accept, &c.

P. A. ADET.

No. 141.

From the Secretary of State to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, November 15, 1796.

SIR,—On the 13th ult. I had the honour to receive your letter of the 12th, but not being possessed of any information on the subject, I laid it before the Secretary of the Treasury, under whose immediate superintendence the collectors of the customs are placed. He has favoured me with the letters of the collectors of Charleston and Wilmington, against whom you complain, with sundry documents describing their proceedings in regard to the British ship Amity (which you call the Mary) that was carried into the port of Charleston, as a prize to the French privateer Leo ; and to the British ship Betty Cathcart and the snow Aaron, which were carried into the port of Wilmington, as prizes to the French privateer Bellona.

If the French consul at Charleston, Mr. Dupont, had correctly stated the facts respecting the ship *Amity*, I trust you would have found no cause to complain against the collector, Mr. Holmes, whose conduct appears evidently to have been guided by an honest sense of his duty and the laudable spirit of a citizen, when he saw the laws and authority of his country treated with disrespect. Permit me then to state the case from the papers now before me.

On the 7th of April last the privateer *Leo* carried her prize, the *Amity*, into Charleston. The prize was entered at the customhouse, and security given, as usual, for the duties on her cargo. The federal circuit court being in session, the British vice consul applied and obtained an injunction prohibiting the sale of the prize.

Then the captors represented to the collector, that the prize ship was so disabled, that she could not proceed to the nearest French port, agreeably to our treaty with France. Thereupon the collector directed a survey of the ship to be made. The persons, who surveyed her reported, on the 30th of May, various defects in her bottom, beams, decks, masts, yards, rigging and sails, to prove her to be unfit for sea; and Mr. Vessey, an agent for the captors, asserted, *that the ship was incapable of being fitted for sea, and that it was impossible for her to be refitted so as to carry her cargo to any foreign port*; a cargo of the immense weight of near 600 hogsheads of sugar, rum, &c. Hence it appeared reasonable to the collector, that the captors should be allowed to ship the prize goods in other bottoms; and after taking advice, which confirmed his opinion, he, on the application of the agents, gave the requisite permission. And in consequence, "the greatest part of the cargo was shipped in neutral bottoms, for the benefit of the drawback; the duties having been previously secured." Thus far all was very well; and I cannot but observe, that the proceedings of the collector are marked with liberality.

But now the difficulties began. After the survey had been made, and the greatest part of the cargo shipped in neutral bottoms, the captors or their agents, in defiance of the laws of the United States (for the British treaty had then become a publick law) and in direct contempt of the injunction of the federal court, sold the prize ship to Ame-

rican citizens : and the French consul, Mr. Dupont, sanctioned the sale. The purchasers immediately repaired the prize ship, which had been declared to be *irreparable* and applied to the collector for her clearance as an *American* vessel. The collector seeing the deception which had been practised upon him, and considering the violation of the laws, and the contempt of the authority of the United States, very properly refused his concurrence to render those deceitful and illegal acts finally successful.

Your letter, grounded on Mr. Dupont's information, and a memorial of Messrs. North and Vessey, to the Secretary of the Treasury, state that the collector refused permission to lade the prize cargo on board neutral vessels, until after a part of it had been destroyed by fire. But the papers before me show, that the collector had satisfied himself, as early as the 30th of May, that the prize cargo might lawfully be carried away in neutral or other bottoms, the prize ship having been considered as irreparable. Hence it appears highly improbable and nearly impossible, that after the 30th of May, the collector should have *refused* his permission to export the cargo in neutral vessels. In the interval between the 30th of May, and the 13th of June, (when it seems the great fire happened at Charleston) it is possible, that no application was made to the collector to permit the exportation of the cargo in neutral vessels. But at no time has the collector discovered a disposition to throw unnecessary difficulties in the way : and his suspense, in a case as *new* as it was *important*, continued only until he obtained advice which sound discretion required him to ask.

You are under a mistake about the portion of the prize cargo, which was destroyed by fire : permit me to exhibit the facts, as stated by Messrs. North and Vessey, the agents for the prize. The cargo of the ship *Amity* consisted of—

490 hogsheads of sugar, wt. gross,	786,398	
70 tierces	do.	do. 70,870
		<hr/>
		857,268 pounds
310 bags of pimento,	- -	33,488 pounds
27 hhd. of rum,	- - -	2,939 gallons

Consumed in the fire at Charleston, June 13th—

52 hhds. of sugar }
2 tierces do. } 87,292 lbs.—which is but little more

than a tenth part of the cargo, and it is not intimated, that any other part of her cargo was destroyed.

From this state of facts, no blame appears to attach to any officer of the United States. The sale of the prize and her cargo was lawfully prohibited; but by a liberal construction of the treaty with the French Republick, permission was given to export the cargo in other vessels, when the prize ship was in effect condemned as utterly unfit ever again to go to sea. It is true, that when the collector found himself deceived by the agents; when he found, that the ship had been illegally sold to *American citizens*, and then promptly repaired, he refused those American citizens a clearance for her departure. It is true, that after the proofs and acknowledgment of the sale to those *American citizens*, after the *American* flag had for several days been flying on board her, he refused to permit her departure as a *French prize*, he refused her to the consul Dupont, who, not respecting the laws and authority of the United States, knowingly sanctioned the sale: and under all these circumstances, will not his refusal be deemed excusable?

In respect to the two prizes carried into Wilmington in North Carolina, there does not appear in the conduct of the collector, Mr. Read, any *designed* rigour, beyond the requisitions of the laws of the United States. In his letter of the 26th of July to the Secretary of the Treasury, which is now before me, he manifests a desire merely to perform his duty according to his conception of the meaning of the laws; but requests instructions for his guide. On the 20th of August (the day after his letter was received) the Secretary wrote him directions, particularly to permit the unloading of the prizes, if upon examination it appeared necessary to the repairing of them. The collector's temporary opposition to this measure arose evidently from a mistaken construction of a former letter from the Secretary of the Treasury. This mistake was promptly corrected; and it is now upwards of two months since they were going to unload both vessels. Any damage that may have ensued from the involuntary errors of the collector, the captors or their agents will do well to state for consideration.

With respect to the losses, which may have been sustained by the captors of the prize ship *Amity*, at Charleston, the documents with which I have been furnished prove that they must be the result of their own misconduct, or of an accident which no human foresight could prevent. If the agents of the prize shall produce counter-proofs, they will receive all due consideration.

To the four questions stated in your letter be pleased to accept the following answers.

“1st. Will the prizes, made by the ships of the Republick upon the English continue to be sold here?”

I have had the honour, in some former letters, to state to you the sense of the government on this point, with the reasons to support it. Permission to sell prizes was considered by the government not demandable as of right. The power permitting could therefore restrain the sales. The only restraint yet imposed has respected captures made by *privateers*.

“2d. Will the prizes, made by the privateers of the Republick upon others than the English be sold?”

As the original permission to sell prizes extended to those taken from *all* the enemies of the French Republick; and as the restraint lately imposed refers merely to British vessels, pursuant to the article of the treaty just mentioned, so the indulgence in other respects is to be considered as remaining at present on its original footing.

“3d. Shall we unconditionally enjoy the right of unlading the prizes in case of damage, and of having them repaired?”

The right of unlading prize vessels, when they are so damaged as to be unfit to proceed to sea without repairs, will not be controverted: but the unloading and storing of the cargoes must be under the inspection of the proper officers of the United States, as a necessary precaution against a transgression of our laws. And in case the prize vessels are really irreparable, and in consequence are regularly condemned as unfit ever to proceed to sea, their cargoes may be exported as *French property* in other bottoms.

“4th. Can a part of the prize, sufficient only for the expense of the repairs be sold?”

So much of the prize cargo may be sold, as shall *bona fide* be necessary for the repairs, without which the vessel

will be unfit to proceed to sea. But such sales must be made under the inspection of the collectors, pursuant to the instructions from the Treasury Department, for securing the duties on imports and confining the amount of the sales to the necessity of each case.

With respect to the ship *Amity* at Charleston, the collector of that port will be instructed to permit her departure as a French prize.

This letter, in substance, as it now appears, was prepared to be sent you in the last month; but doubts arose on some points concerning which legal opinions were taken, and occasioned the further delay to this time.

I have the honour to be, &c.

TIMOTHY PICKERING.

No. 142.

TRANSLATION.

The Minister Plenipotentiary of the French Republic, near the United States, to Mr. Pickering, Secretary of State of the United States. Philadelphia, 19th Nivose, 4th year of the French Republic, one and indivisible, (9th Jan. 1796, O. S.)

SIR,—Instructed to watch over the interests of my country, instructed not to allow either its rights or its honour to be violated, instructed to maintain peace and good harmony between France and the United States, I should betray the confidence of my government and the duties which my station impose on me, were I now to remain silent on a circumstance which must make all France discontented, and were I not to hasten to give you information of it.

When the National Convention decreed that the French flag should be presented by its minister to the United States, there was but one opinion as to the place in which it should be deposited. A decree had placed yours in the hall of the legislative body.—Every one thought that the French flag would with you receive the same honour: all my fellow citizens have one after another contemplated that pledge of your friendship, and each one believed that the Americans would also have the same eagerness to view the

symbol of the enfranchisement of a friendly nation, who like them had purchased their liberty at the price of their blood.

This expectation has not been fulfilled, and it has been decided that the French flag should be shut up among the archives. Whatever may be the expression of friendship in the answer of the President; however amicable also are the resolutions of the House of Representatives, I cannot doubt, sir, that the order made for preserving a flag, which the Republick sent only to the United States, will be looked upon by it as a mark of contempt or indifference. Pride, sir, you know is the portion of a free people, and it is never wounded but at the expense of friendship. The present circumstances are extremely delicate, and when I am convinced the American government had no intention of leading the French Republick to think that the gift of her flag was worth nothing in its eyes, should it not give her authentick proofs of it? Would it not be convenient to fix this flag in a similar place to that which yours occupies in France, and where the national honour expected to see it?

I venture to believe, sir, that when I make you this proposition you will know how to appreciate my intentions, and will see in this step the man, who, faithful to his character, endeavours to prevent every cause of altercation between the governments of two people united by the same interests. Accept, sir, &c.

P. A. ADET.

No. 143.

From Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, Jan. 15, 1796.

SIR,—I have received your letter of the 9th indicating your regrets at the disposition, which has been made of the colours you presented to the United States, and your opinion that all France will be dissatisfied.

You remark, that when the National Convention decreed that the colours of France should be presented to the United States, there was but one opinion on the place where they should be deposited; and as a decree had

placed those of the United States in the hall of the legislative body, that the French colours would here receive the same honour. You even suppose that the depositing of these colours among the archives of the United States will be received as a mark of contempt, or at least of indifference.

Indeed, sir, I should extremely regret, that the real and essential friendship of two free people should be wounded by a circumstance of this kind, resulting from the different ideas they entertain of the mode most proper for preserving the signs of their liberty, and of the victories and triumphs by which it was acquired.

It should be remembered, that when it was decreed by the National Convention, that the colours of the United States should be placed in the hall of their sittings, the representatives of the French people assembled in one room, and that their own colours (it is understood) had been there previously exhibited.

In the United States, on the contrary, the representatives of the people are divided into three branches. For the President and senators are as truly the representatives of the people as the members of the other house, the only difference being this, that the latter are chosen immediately by the people, and the two former by persons whom the *people* have previously chosen to elect them. But each of the three branches of the representatives of the people has its peculiar duties. While that of the House of Representatives is confined to objects of *internal legislation*; and that of the Senate, embracing the same objects, extends partially to some external concerns, the President is the *sole constitutional organ* of communication with foreign nations; and for this purpose the *people* have appointed him their *sole representative*. When therefore the colours of France were delivered to the President, they were in the only proper manner presented to the people of the United States of America, for whom the President is the only constitutional depository of foreign communications. Of these, the President transmits to the two houses of Congress such as he thinks proper for their information: and thus the colours of France were exhibited to their view. But the United States have never made a publick display of their own colours, except in their ships and in their military establishments.

Under these circumstances, what honour could be shown to the colours of France more respectful than to deposit them with the evidences and memorials of our own freedom and independence? If to the United States only the colours of France have been presented—I answer that the colours of France alone have been deposited with our national archives; that both may be preserved with equal care.

I must also remark, that the people of the United States exhibited no where, in their deliberative assemblies, any publick spectacles as the tokens of their victories, the symbols of their triumphs, or the monuments of their freedom. Understanding in what true liberty consists,—contented with its enjoyment, and knowing how to preserve it, they reverence their own customs, while they respect those of their sister Republick. This I conceive, sir, is the way to “maintain peace and good harmony between France and the United States;” and not by demanding of one nation an adoption of the manners of the other: in these we must be mutually free.

This explanation, sir, I hope will be satisfactory to you and to your government, and in concurrence with the manner of receiving the French colours, and the unanimous sentiments of affection and good wishes expressed on the occasion by the President, the Senate and the House of Representatives, effectually repel every idea that could wound the friendship subsisting between the two nations. I have the honour to be, &c.

TIMOTHY PICKERING.

No. 144.

TRANSLATION.

The Minister Plenipotentiary of the French Republick, near the United States of America, to Mr. Pickering, Secretary of State of the United States. Philadelphia, the 13 Vendose, 4th year of the French Republick, one and indivisible (3d March, 1796, O. S.)

SIR,—Some periodical works, and particularly the Directory printed at Philadelphia, have come out this year with an alteration against which it is my duty to complain.

The French ministers have always enjoyed the precedence as to those of England, not only in the United States but throughout the world ; and France as a Republick has preserved and will preserve the rank she has held in the diplomatic corps under her ancient regime.

The French people look upon all people as equal and as brothers ; but they will never suffer that partial distinctions contrary to custom should be granted directly or indirectly to any state whatever.

The foreign agents near your Republick have hitherto been arranged in the Directory and other almanacks of the United States in the order of rank appertaining to their respective powers.

This year the agents of Great Britain, who enjoy only the third rank, have there been placed before those of France and Spain.

It is usual, sir, for almanacks of this kind to be corrected under the direction of governments, and with their approbation. I should presume that this is not the case in the United States, since they would have noticed the alteration against which I complain.

If I am mistaken in this respect, as I ought to suppose that this change is only an error, I shall confine myself, sir, to requesting you to have it rectified by suppressing the publication and the distribution of the Directory and other almanacks in which it has been committed.

But if, as I imagine, these works are the property of individuals, and the government of the United States can exercise no influence as to their correction, in this case, as their publication, although free, has taken place under the protection of the American laws, and if the alteration therein made should not be contradicted, the publick may conclude either that it has been consented to by the government of the United States, and acquiesced in by me, or that the French Republick does not preserve as to England the priority she has always enjoyed :

I pray you, sir, to be pleased to declare in writing, that the government of the United States have no concern in the printing of the Directory and other works of that kind, in which the agents of the French Republick near the United States have been registered this year after those of Great Britain, against the usage and the right of pre-

cedency which belongs to the French Republick; and to permit me to publish in the newspapers your answer or declaration which I have the honour to request.

Accept, sir, my sentiments of respect and esteem,
P. A. ADET.

No. 145.

Mr. Pickering, Secretary of State, to Mr. Adet, Minister Plenipotentiary of the French Republick. Department of State, March 14, 1796.

SIR,—I received your letter of the 3d instant, complaining of an alteration introduced into some periodical works, particularly the Directory printed at Philadelphia, in which the names of foreign agents in the United States are so arranged, that those of Great Britain precede those of France; although (you observe) not only in the United States, but in all the world, France has always enjoyed, in the diplomatic line, the precedency of Great Britain.

You rightly imagine, sir, that works of this kind are not here, as in Europe, edited under the direction of government. They are all the property of individuals, who print what they please, and in such order as their ideas of propriety, or humour or accident may direct. The contents of such annual works are usually confined to facts, the details of which are not of a nature to be subjected to any legal regulation.

Supposing the alteration in the order of publishing the names of the agents of foreign powers in the United States to have originated in an error, without any direction from the government, “you request, that the error may be corrected, by a suppression of the publication and distribution of the Directory and other almanacks, in which the same error has been committed.” But, sir, this is impossible. These works are, as I have before observed, the property of private citizens, who, having offended against no law, can be subjected to no penalty or loss. The press in the United States, you must have seen, sir, is perfectly free. Not to trouble you with any more remarks, I will close this letter with noting the manner in which the foreign diplomatic characters in the United States have

been arranged in a like annual publication in Boston. In the Massachusetts Register for 1796, they stand in this order.

Those from the French Republick,
the United Netherlands,
Portugal,
Spain,
Sweden,
Prussia,
and last of all those from Great Britain.

It is not necessary for me to express any opinion whether this arrangement is erroneous or correct: or whether among nations equal by their sovereignty and independence, there can be any precedency *as of right*: but I may presume that the government of the United States will not attempt, by any official arrangement, voluntarily to determine questions of rank among foreign powers, who will be no more inclined to submit them to their consideration, than to be governed by their decisions.

I can have no objection, sir, to your publishing this answer to your letter, agreeably to your desire.

I have the honour to be, &c.

TIMOTHY PICKERING.

No. 146.

Extract of a Letter from Mr. Monroe, dated at Paris, May 2, 1796, to the Secretary of State.

“ I INFORMED you in my last, of the 25th of March, that I was promised by the directory, in an audience I had obtained of that body, that the minister of foreign affairs should state to me such objections as were entertained by this government to certain measures of our own, and in the interim that no step should be taken under the existing impression, nor until my reply was received and fully weighed: and I have now the pleasure to transmit to you the result of the communication which afterwards took place between the minister and myself on that subject.

“ I do not know what effect my reply has had upon the mind of the directory, because it was only sent in a few days since: I shall endeavour to ascertain this if possible.

and in case I do, will immediately afterwards apprize you of it.

“ I think proper here to communicate to you an incident which took place between the minister and myself, after I had obtained from the directory a promise that he should state the objections above referred to, and discuss their merits with me, and which was as heretofore intimated to you on the 8th of March last. Soon after that period I received from the minister the communication promised, in a note of the same date, but differing in some other respects from the present one, and particularly in the number of complaints, two of the catalogue being now given up by him, and to which I replied as soon as I could prepare my reply, in a note bearing likewise the same date with that which I now enclose you. After he had perused my reply, he was sensible that he had insisted on some points that were not tenable, and in consequence asked that I would permit him to retake his note returning mine that he might correct himself, and of course that I would consider the discussion, as yet to be commenced. I told him immediately that I would do so with pleasure, because I did not consider myself in the light of a solicitor bound to catch at and take advantage of little errors: that I wished upon all occasions and with every one, and especially upon the present occasion with him, to act with candour, and in consequence I soon afterwards restored him his note, and took back my own.

“ At the time when I made the minister this promise, I thought it in my power to comply with it. I had it is true, according to custom, written and enclosed you a copy of both papers, but yet I thought doctor Brockenbrough to whom I had intrusted my letter for you was in France, within my reach, so that I might recover it. Upon inquiry however, I found that he had departed by way of Dunkirk for England, a route I knew he intended to take, and in which state of things all that I could do was to write and request him to return me that letter, and which I immediately did. I have not yet heard from him, and of course cannot tell whether I shall recover it or not. As soon however as I knew that he was gone, I apprized the minister of it as likewise of the above circumstances, satisfying him that I had acted with good faith so far as depended on me in fulfilling in every respect the promise I had

made: and in communicating the above to you, I do it as well to explain this transaction, and which will require explanation in case you receive that letter, as to make known to you as far as depends on me, the condition on which you receive it.

“The minister thought proper to give his second communication the same date with the former one, although more than a fortnight had intervened between the one and the other: and in consequence I followed his example giving my latter reply the same date with the former one. His motive I did not inquire into: mine was that the directory might see that the delay which took place did not proceed from me.”

No. 147.

TRANSLATION.

Summary Statement of the complaints of the French Republic against the Government of the United States:

First complaint.—The inexecution of the treaties.

1st. The courts of justice of the United States have taken and still take cognizance of prizes which our privateers conduct into their ports, notwithstanding the express clause of the treaty against it. Our ministers have proposed various arrangements for limiting these usurpations. The federal government had itself proposed measures on this subject, the first propositions were not accepted, and the latter measures fell into disuse. The disgusts, the delays, the losses resulting to our seamen from such a state of things, are palpable. They almost entirely deprive the Republic of the advantages which it should expect from this article of the treaty.

2d. The admission of English ships of war, even in cases where they are excluded by the 17th article of the treaty, that is when they have made prizes on the Republic or on its citizens. The weakness with which the federal government conceded this point in the first instance has increased the pretensions of Great Britain, and now the ports of the United States have become a station for the squadron of admiral Murray who for two years past has there victualled his ships in order to cruise on the

American commerce, and to pillage our property. This division carries its audacity even to the conducting thither its prizes.

3d. The consular convention, forming a part of our treaties, is equally unexecuted in its two most important clauses: the first granting to our consuls the right of judging exclusively in disputes arising between Frenchmen is become illusory for the want of laws giving to the consuls the means of having their decisions executed. The consequence of this inability tends to annihilate the prerogative of our consuls, and materially to injure the interest of our merchants.

The second gives to our consuls the right of causing our mariners who desert to be arrested. The inexecution of this part of the convention affects beyond all expression, our maritime service, during the stay of our vessels in the American ports. The judges charged by the laws with issuing the mandates of arrest, have lately required the presentation of the *original* roll of the crew in contempt of the 5th article admitting in the tribunals of both powers copies certified by the consul. Local circumstances in a thousand instances oppose the production of the original roll, and then the seamen are not liable to be apprehended. 4th. The arrestation in the port of Philadelphia in the month of August, 1795, of the captain of the corvette the *Cassius* for acts committed by him on the high seas. This is contrary to the 19th article of the treaty of commerce which stipulates, "That the commanders of publick and of private vessels shall not be detained in any manner," besides it violates the most obvious law of nations which places the officers of publick vessels under the safeguard of their flag. The United States have had sufficient proofs of deference on the part of the Republick, to count upon its justice in this instance. The captain was imprisoned notwithstanding the consul of the Republick produced bail. Scarcely was he set at liberty when the corvette although very regularly armed at the Cape by general Laveaux, was arrested (and it appears she is still so) under pretext, that eight months before, she sailed from Philadelphia suspected of having armed in that port.

Second complaint—The impunity of the outrage committed on the Republick in the person of its minister; the

citizen Fauchet by the English ship *Africa* in concert with the vice consul of that nation.

The arrestation in the waters of the United States of the packet boat having citizen Fauchet on board, the search made in the trunks of that minister with the avowed object of seizing his person and papers, merited an example. The insult was committed on the first of August, 1795 (O. S.) the ship all the rest of the month blocked up the *Medusa* frigate belonging to the Republick at Newport, and did not receive orders to depart till after the sailing of that vessel. For a new outrage on the United States by a menacing letter, the exequatur was withdrawn from the consul merely for having taken a part in the *latter* insult.

Third complaint—The treaty concluded in November, 1794, between the United States and Great Britain. It will be easy to prove that the United States in this treaty have knowingly and evidently sacrificed their connections with the Republick and the most essential and least contested prerogatives of neutrality.

1. The United States besides having departed from the principles established by the armed neutrality during the war for their independence, have given to England to the detriment of their first allies, the most striking mark of an unbounded condescension, by abandoning the limit given to contraband by the law of nations, by their treaties with all other nations, and even by those of England with a greater part of the maritime powers. Is it not evidently straying from the principles of neutrality to sacrifice exclusively to that power the objects proper for the equipment and construction of vessels?

2. They have gone still further. They have consented to extend the denomination of contraband even to provisions. Instead of pointing out particularly as all treaties do, the cases of the effective blockade of a place as alone forming an exception to the freedom of this article they have tacitly acknowledged the pretensions raised by England to create blockades in our colonies and even in France by the force of a bare proclamation. This abandonment of the independence of their commerce is incompatible with their neutrality. Mr. Jefferson has himself acknowledged it in his letter of 7th September to the minister plenipotentiary of the United States at London on

the subject of the order of 8th June, 1793. From this confession, especially from all the tyrannical edicts of the king of Great Britain, from which the commerce of the United States as well as their national honour have suffered so much, a result quite different was hoped from the negotiation of Mr. Jay. It is evident by the clause of the treaty limiting the existence of this desertion from the neutrality to the duration of the present war, that Mr. Jay did not hesitate to sacrifice our colonies to Great Britain during the remaining hostilities which should decide their fate. Mr. Monroe is left to judge how far these concessions accord with the obligation contracted by the United States to defend our colonial possessions, and with the no less sacred duties imposed on them by the immense and invaluable benefits which they draw from their commerce with them.

Paris, the 19th Ventose. 4th year of the French Republic, one and indivisible.

The minister for foreign affairs,

CH. DE LA CROIX.

March 9, 1796.

[The other communications accompanying the last message of the President, will be printed first in VOL. III.]

1891

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